

# Legal Update

## Biden Executive Order Calls for Regulatory Proposals on Digital Assets and Central Bank Digital Currency

On March 9, 2022, President Biden signed an executive order titled “Ensuring Responsible Development of Digital Assets” (the “Order”).<sup>1</sup> The Order directs a broad range of federal agencies to recommend legislative and regulatory proposals to foster the development of, and address the risks presented by, digital assets and a central bank digital currency (“CBDC”).

The Order is the next step in the development of a regulatory framework for digital assets and CBDC in the United States. As digital assets markets have emerged and rapidly grown over the past decade, the applicability of US financial laws and regulations to digital assets has remained unclear. How the US regulatory framework should be modernized to address digital assets remains the subject of significant debate, with sharp differences in views among regulators, market participants, and academics. The actions contemplated under the Order will hopefully reconcile or resolve some of these differences, at least within the federal government.

While the Order has been eagerly anticipated by many in the digital assets world, it does not itself directly change any regulation of digital assets or dictate a preordained outcome for digital asset regulation. Instead, the Order acknowledges a diverse set of relevant public policy and regulatory considerations and sets in motion a process that could produce regulatory proposals around which a consensus could be reached on how Congress and financial regulators should modernize US regulations to incorporate digital assets. Accordingly, the ultimate success or failure of the Order—and the ideas it promotes—will depend on the quality of the reports produced pursuant to the Order and whether Congress and, to a lesser extent, financial regulators seek to adopt the reports’ recommendations.

This Legal Update provides an overview of the Order and includes a chart in [Appendix A](#) detailing each of the reports to be produced pursuant to the Order and the deadlines for their completion.

### Digital Asset Regulation

#### REGULATORY JURISDICTION OVER DIGITAL ASSETS

Many market participants have been hoping for clarity regarding which US federal agency or agencies have jurisdiction over digital assets. It appears they will have to wait. While the Order provides clarity as to which regulatory agencies will be responsible for developing certain reports and making

particular recommendations with respect to digital asset regulation, it does not provide a clear framework for which agencies will ultimately be responsible for regulating digital assets. While the Order does note that “many activities involving digital assets are already within the scope of existing [US] laws and regulations,” it is unclear which specific activities the Order is referring to. If anything, the inclusion of so many agencies in the Order implies that digital assets could continue to be subject to overlapping regulation at the federal level.

## IMPLEMENTATION OF THE ORDER

The implementation of the Order will be coordinated by the Assistant to the President for National Security Affairs (National Security Advisor Jake Sullivan) and the Assistant to the President for Economic Policy (National Economic Council Director Brian Deese). The fact that the Order was issued by, and is being coordinated through, the White House may signify the importance of digital asset regulation to the Biden administration.

Agencies involved in implementing the Order will include, as necessary, the Department of the Treasury; the Departments of State, Defense, Justice, Commerce, Labor, Energy, and Homeland Security; the Environmental Protection Agency; the Office of Management and Budget; and the Office of the Director of National Intelligence. The Order also invites representatives of other agencies to attend interagency meetings as appropriate, including representatives of the Board of Governors of the Federal Reserve, Consumer Financial Protection Bureau, Federal Trade Commission, Securities and Exchange Commission, Commodity Futures Trading Commission, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency. Each of these agencies covers at least one of the regulatory priorities identified by the Order.

## POLICY PRIORITIES

The Order establishes the Biden administration’s policy priorities for the regulation of digital assets. Notably, it does not impose any new policies directly on digital assets or digital asset issuers or service providers. Instead, it directs federal agencies to study issues relevant to the digital assets markets, ranging from consumer protection to illicit finance, and to produce reports. Most of these reports are required to include recommendations for legislative and regulatory reform to address risks and regulatory gaps identified by the reports.

The Order categorizes the administration’s policy priorities with respect to digital asset regulation in the following six areas: (1) consumer and investor protection, (2) financial stability, (3) illicit finance, (4) US leadership in the global financial system and general economic competitiveness, (5) financial inclusion, and (6) responsible innovation. To facilitate these priorities, the Order commissions 19 different regulatory actions (most of which are reports), as detailed further in [Appendix A](#), that will be carried out by a wide variety of federal agencies. Most of these actions and reports have milestones or dates for completion within the next six to nine months.

### *Consumer and Investor Protection and Financial Stability*

The Order reveals (not unsurprisingly) that the Biden administration’s most important policy priorities for digital assets are consumer and investor protection. Of the 19 reports or actions commissioned by the Order, 15 have direct ties to consumer or investor protection and risks to financial stability. Moreover, during the background call with respect to the Order, a senior Biden administration official noted that “an American approach to digital assets is one that encourages responsible innovation by decisively mitigating the risks, in particular the *financial stability and consumer protection risks*”

(emphasis added) associated with digital assets.<sup>2</sup> The official also expressed concern that “certain earlier forms of financial innovation have ended up hurting American families while making a small group of people very rich,” underscoring the need for robust consumer and investor protection.

With respect to consumer protection, reports will consider certain issues:

- The extent to which existing consumer, privacy, investor, and market protection regulations and regulatory measures may be used to address the risks of digital assets and whether additional measures may be needed.
- The conditions that would drive mass adoption of different types of digital assets and the risks and opportunities such growth might present to US consumers, investors, and businesses.
- How technological innovation may impact these efforts, with an eye toward those most vulnerable to disparate impacts.
- Expanding access to safe and affordable financial services.

With respect to financial stability, the reports and actions commissioned by the Order cover issues such as:

- Financial stability risks and regulatory gaps posed by various types of digital assets.
- Particular features of various types of digital assets and recommendations that address the identified financial stability risks posed by these digital assets.
- What, if any, effects the growth of digital assets could have on competition policy.

### ***Illicit Finance***

The Order also clearly establishes as another administration priority the development of a framework to prevent the use of digital assets in illicit finance. The Order asserts that “digital assets have facilitated sophisticated cybercrime-related financial networks and activity, including through ransomware activity.” The background call to the Order also expressed concern that “most current digital asset systems were not designed with critical controls in mind like identity, sanctions screening, and revocability of illicit transactions.” Five of the 19 regulatory actions imposed by the Order relate directly to either illicit finance, anti-money laundering, or law enforcement.

This policy priority aligns with recent actions by the Department of Justice (“DOJ”). In October 2021, DOJ announced the creation of the National Cryptocurrency Enforcement team to spearhead complex investigations and prosecutions of criminal misuses of cryptocurrency and to recover illicit proceeds of crimes facilitated by cryptocurrency. This came on the heels of DOJ’s development of a Cryptocurrency Enforcement Framework in October 2020, which laid out DOJ’s view that cryptocurrency is likely here to stay and should be addressed by law enforcement. The reports requested by the Order seek to develop an even more robust mechanism for preventing cryptocurrency’s use for illicit means.

### ***International Role in Digital Assets***

Maintaining US economic competitiveness (and, perhaps, the dollar as the world’s reserve currency) is another priority under the Order. Four of the 19 regulatory actions directly focus on solidifying the United States’ role in the international digital asset marketplace. The Order directs the Treasury to establish a framework for international engagement related to digital assets with the twin goals of facilitating the adoption of global principles and standards for how digital assets are used and

transacted, and promoting the development of digital asset and CBDC technologies consistent with US values and legal requirements. During the background call with respect to the Order, the senior Biden administration official highlighted that many of the countries currently exploring CBDCs are also “working together to set standards for CBDC design and cross-border systems.” According to the official, this will have “implications for domestic and international priorities including the centrality of the US dollar in the global financial system,” and the official noted that the Order is designed to ensure that the United States has a leadership role in this process.

## CENTRAL BANK DIGITAL CURRENCY

Beside directing federal agencies to develop regulatory proposals for digital assets, the Order also seeks to facilitate the introduction of a US CBDC, which would be a digital form of the dollar. The Order asserts that research and development regarding the potential design and deployment options of a US CBDC should be undertaken with “urgency.” As discussed in detail in [Appendix A](#), the Order directs a number of different federal agencies to develop reports on the development of a US CBDC. Specifically, reports commissioned by the Order will consider the following issues relevant to the development of a US CBDC:

- CBDC design options.
- Government action required to launch a CBDC, including agency actions and legislative changes.
- Implications of a CBDC for national economic interests such as economic growth and stability, financial inclusion, potential relationships between public and private digital currencies, the future of sovereign and privately produced money globally, and the extent to which foreign CBDCs could displace existing currencies and alter the payment system in ways that could undermine US financial centrality.
- Implications of a CBDC for the US financial system, including whether CBDCs could improve the efficiency and reduce the costs of existing and future payment systems, the effect CBDCs would have on monetary policy, and the effects that the growth of foreign CBDCs may have on the US interests generally.
- Government technological capabilities required to launch a CBDC.
- Implications of a CBDC for national security and financial crime (including illicit financing risks, sanctions risks, other law enforcement and national security interests, and human rights).
- Implications of a CBDC for climate change.

While the Order stops short of directing the Federal Reserve to establish a US CBDC, the Order implicitly seeks to lay the framework for the CBDC’s creation. Although Federal Reserve officials have offered divergent views on the need for and risks presented by a CBDC, the Order’s language indicates that the Biden administration would like the Federal Reserve to take further actions to develop the capacity to issue a CBDC.<sup>3</sup> Notably, the Order is silent on addressing the many concerns raised regarding the suitability and feasibility of a CBDC and omits any reference to the peer nations that have investigated and abandoned their own CBDC initiatives.<sup>4</sup>

The fact sheet put out in connection with the Order also notes that over 100 countries are exploring or piloting such currencies.<sup>5</sup> It seems likely that the “urgency” of conducting research and development regarding a potential US CBDC noted in the Order is driven by the numerous other central banks around the world that are also exploring the issuance of CBDCs.

## CONCLUSION

Given the widely recognized need to reduce the legal uncertainty around digital assets, the Order has understandably generated much attention, particularly among the digital asset community. However, as noted above, the Order does not change any existing regulation of digital assets and, due to the broad and numerous policy considerations that the Order directs federal officials to incorporate into their recommendations, the Order does not provide much insight into what the exact policy recommendations are likely to be—other than proposals to significantly enhance the authority of federal regulators over digital assets. Similarly, the Order also does not promise that there will be definitive recommendations or regulatory clarity any time soon. Usually such reports merely generate brief news stories and then are quickly forgotten. However, if the Order results in the production of reports and policy recommendations that are viewed as credible and pragmatic—and can garner bipartisan support—the Order’s reports could help lay the foundation for legislation in the years to come that could provide much needed legal certainty for the regulation of digital assets.

## Appendix A: Specific Regulatory Actions Required by the Order

#	Report Subject	Primary Agency <sup>6</sup>	Timeline <sup>7</sup>	Specific Topics to Be Covered
1	CBDC – Future of Payment Systems	Treasury	180 Days	<p>A report that will include the conditions that drive broad adoption of digital assets, the extent to which technological innovation may influence these outcomes, and implications for the US financial system, the modernization of and changes to payment systems, economic growth, financial inclusion, and national security.</p> <p>Based on potential CBDC design options, the report will also include an analysis of (i) the potential implications of a CBDC (based on the possible design choices) for national interests, including implications for economic growth and stability; (ii) the potential implications a CBDC might have on financial inclusion; (iii) the potential relationship between a CBDC and private sector-administered digital assets; (iv) the future of sovereign and privately produced money globally and implications for the US financial system and democracy; (v) the extent to which foreign CBDCs could displace existing currencies and alter the payment system in ways that could undermine US financial centrality; (vi) the potential implications for national security and financial crime (including illicit financing risks, sanctions risks, other law enforcement and national security interests, and human rights); and (vii) an assessment of the effects that the growth of foreign CBDCs may have on the US interests generally.</p>
2	CBDC – Ongoing Federal Reserve Report	Federal Reserve	N/A – Ongoing	<p>A report that includes the extent to which CBDCs could improve the efficiency and reduce the costs of existing and future payments systems, the optimal form of a US CBDC, and a strategic plan for Federal Reserve and broader US government action that evaluates the necessary steps and requirements for the potential implementation and launch of a US CBDC. The report is also encouraged to evaluate the extent to which a US CBDC could enhance or impede the ability of monetary policy to function effectively as a critical macroeconomic stabilization tool.</p>

3	CBDC – Assessment of Legislative Changes	DOJ	180 Days	An assessment of whether legislative changes would be necessary to issue a US CBDC, should it be deemed appropriate and in the national interest.
4	CBDC – Legislative Proposal	DOJ	210 Days	A legislative proposal, based on consideration of Items 1 and 2.
5	Consumer, Investor, and Business Protection	Treasury	180 Days	A report that will describe the implications of developments related to and the adoption of digital assets and changes in financial market and payment system infrastructures for US consumers, investors, businesses, and equitable economic growth. One section of the report will address the conditions that would drive mass adoption of different types of digital assets and the risks and opportunities such growth might present to US consumers, investors, and businesses, including a focus on how technological innovation may impact these efforts, with an eye toward those most vulnerable to disparate impacts. The report will also include policy recommendations and potential regulatory and legislative actions, as appropriate, to protect US consumers, investors, and businesses and support expanding access to safe and affordable financial services.
6	Consumer Protection/Data Privacy	FTC, CFPB	N/A	The Order encourages each listed agency to consider the extent to which privacy or consumer protection measures within each of the two agencies’ respective jurisdictions may be used to protect users of digital assets and whether additional measures may be needed.
7	Investor and Market Protection	SEC, CFTC, Federal Reserve, FDIC, OCC	N/A	The Order encourages each listed agency to consider the extent to which investor and market protection measures within the five agencies’ respective jurisdictions may be used to address the risks of digital assets and whether additional measures may be needed.
8	Government Technology Infrastructure	Office of Science and Technology Policy	180 Days	A report that will contain a technical evaluation of the technological infrastructure, capacity, and expertise that would be necessary at relevant US government agencies to facilitate and support the introduction of a CBDC system, should one be proposed. The evaluation will address the technical risks of the various designs, including with respect to emerging and future

				technological developments, such as quantum computing. The evaluation will also include any reflections or recommendations on how the inclusion of digital assets in federal processes may affect the work of the US government and the provision of government services, including risks and benefits to cybersecurity, customer experience, and social-safety-net programs.
9	Law Enforcement Role	DOJ	180 Days	A report that will detail the role of law enforcement agencies in detecting, investigating, and prosecuting criminal activity related to digital assets. The report will include recommended regulatory and/or legislative actions, as appropriate.
10	Competition Policy	DOJ, FTC, CFPB	N/A	The Order encourages each of the listed agencies to consider what, if any, effects the growth of digital assets could have on competition policy.
11	Climate Change	Office of Science and Technology Policy	180 Days (to be updated within 1 year to address knowledge gaps)	A report that will address connections between distributed ledger technology and short-, medium-, and long-term economic and energy transitions; the potential for these technologies to impede or advance efforts to tackle climate change at home and abroad; and the impacts these technologies have on the environment. The report will also address the effect of cryptocurrencies' consensus mechanisms on energy usage, including research into potential mitigating measures and alternative mechanisms of consensus and the design tradeoffs those may entail. The report should also specifically address (1) the potential uses of blockchain that could support monitoring or mitigating technologies to climate impacts, such as exchanging of liabilities for greenhouse gas emissions, water, and other natural or environmental assets and (2) implications for energy policy, including as it relates to grid management and reliability, energy efficiency incentives and standards, and sources of energy supply.
12	Financial Stability	Treasury	210 Days	A report from the Financial Stability Oversight Council ("FSOC"), convened by Treasury, that outlines the specific financial stability risks and regulatory gaps posed by various types of digital assets and provides recommendations to address such risks. The report will also consider the particular features of various types of digital assets and include recommendations that address the identified financial stability risks posed by these digital assets, including any proposals for



				additional or adjusted regulation and supervision as well as for new legislation. The report will also take account of the prior analyses and assessments of the FSOC, agencies, and the President’s Working Group on Financial Markets, including the ongoing work of the federal banking agencies, as appropriate.
13	Illicit Finance and National Security – Supplemental Reports	Treasury, Department of State, DOJ, Commerce, Homeland Security, OMB, DNI, and other relevant agencies	90 Days (post-submission of National Strategy for Combating Terrorist and Other Illicit Financing)	Optional supplemental annexes, which may be classified, submitted by each agency to the President that offer additional views on illicit finance risks posed by digital assets, including cryptocurrencies, stablecoins, and CBDCs, and trends in the use of digital assets by illicit actors.
14	Illicit Finance and National Security – Coordinated Action Plan	Treasury, Department of State, DOJ, Commerce, Homeland Security, OMB, DNI, and other relevant agencies	120 Days (post-submission of National Strategy for Combating Terrorist and Other Illicit Financing)	The relevant agencies will develop a coordinated action plan based on previous conclusions for mitigating the digital asset-related illicit finance and national security risks addressed in the updated strategy. The plan will address the role of law enforcement and measures to increase financial services providers’ compliance with AML/CFT obligations related to digital asset activities.
15	Anti-Money Laundering	Treasury	120 Days (post-submission of certain additional reports) <sup>8</sup>	Treasury will notify relevant agencies regarding any pending, proposed, or prospective rulemakings to address digital asset illicit finance risks. Treasury will also consult with and consider the perspectives of relevant agencies in evaluating opportunities to mitigate such risks through regulation.
16	Global Principles for Digital Assets –	Treasury	120 Days	Treasury will establish a framework for interagency international engagement with foreign counterparts and in international fora to, as appropriate, adapt, update, and enhance adoption of global principles and standards for how digital

	International Framework			assets are used and transacted and to promote development of digital asset and CBDC technologies consistent with US values and legal requirements. This framework will include specific and prioritized lines of effort and coordinated messaging; interagency engagement and activities with foreign partners, such as foreign assistance and capacity-building efforts and coordination of global compliance; and whole-of-government efforts to promote international principles, standards, and best practices.
17	Global Principles for Digital Assets – US Report	Treasury	1 Year (of establishment of Item 16 above)	Treasury will submit a report to the President on priority actions taken under the framework in Item 16 and its effectiveness.
18	US Competitiveness in Digital Assets	Commerce	180 Days	Commerce will establish a framework for enhancing US economic competitiveness in, and leveraging of, digital asset technologies.
19	International Law Enforcement	DOJ	90 Days	A report that will describe methods of strengthening international law enforcement cooperation for detecting, investigating, and prosecuting criminal activity related to digital assets.

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## Endnotes

- <sup>1</sup> White House, *Executive Order on Ensuring Responsible Development of Digital Assets* (March 9, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>.
- <sup>2</sup> White House, *Background Press Call by Senior Administration Officials on the President's New Digital Assets Executive Order* (March 8, 2022), <https://www.whitehouse.gov/briefing-room/press-briefings/2022/03/09/background-press-call-by-senior-administration-officials-on-the-presidents-new-digital-assets-executive-order/>.
- <sup>3</sup> Compare, [Speech by Vice Chair for Supervision Quarles on central bank digital currency - Federal Reserve Board](#), with [Speech by Governor Brainard on central bank digital currencies - Federal Reserve Board](#).
- <sup>4</sup> E.g., BPI, *The Waning Case for a Dollar CBDC* (Feb. 18, 2022).
- <sup>5</sup> White House, *Fact Sheet: President Biden to Sign Executive Order on Ensuring Responsible Development of Digital Assets* (March 9, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/09/fact-sheet-president-biden-to-sign-executive-order-on-ensuring-responsible-innovation-in-digital-assets/>.
- <sup>6</sup> This references the agency that is responsible for coordinating with other agencies and producing the report. Other agencies may provide input on each report.
- <sup>7</sup> This references the number of days from the date of the Order in which each action is due unless described otherwise.
- <sup>8</sup> 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.

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