

Alert | Blockchain & Digital Assets/ Financial Regulatory & Compliance



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Executive Order on Digital Assets Establishes Policy Goals for Whole-of-Government Approach to Regulation

This GT Alert covers the following:

- Executive Order on Ensuring Responsible Development of Digital Assets
- Seven key priorities laid out in the Executive Order

On March 9, 2022, President Joe Biden issued an [Executive Order on Ensuring Responsible Development of Digital Assets](#) (Executive Order) calling for an evolution and alignment of the U.S. government’s approach to digital assets. Given the substantial growth of non-governmental-issued digital assets, which reached a combined market capitalization of \$3 trillion in November 2021 (up from \$14 billion in November 2016) according to the U.S. government, the Executive Order acknowledges the opportunities that digital assets and their underlying technology present, and promotes a policy of “responsible financial innovation” and the need for a whole-of-government approach to ensure continued U.S. leadership in the digital asset space. The Executive Order makes no specific proposals for regulation, instead articulating the policy views of the Administration.

Following a [paper](#) the Board of Governors of the Federal Reserve System issued Jan. 20, 2022 (Paper) discussing how a potential U.S. central bank digital currency (CBDC) could improve the U.S. domestic payments system, as covered in this [GT Alert](#), the Executive Order also sets forth U.S. government policy related to a potential U.S.-issued CBDC.

The Executive Order directs the assistant to the president for national security affairs (APNSA) and the assistant to the president for economic policy (APEP) to coordinate with 17 other agencies, through the interagency process described in [National Security Memorandum 2](#) of Feb. 4, 2021 (Renewing the National Security Council System), the executive branch actions necessary to implement the Executive Order.

This GT Alert covers the following seven key priorities laid out in the Executive Order: (1) U.S.-issued CBDC (U.S. CBDC); (2) consumer and investor protection; (3) financial stability; (4) illicit finance; (5) U.S. leadership in the global financial system and economic competitiveness; (6) financial inclusion; and (7) responsible innovation.

1. U.S. CBDC

The Executive Order places an urgency on research and development of a potential U.S. CBDC by directing the U.S. government to assess the technological infrastructure and capacity needs for a potential U.S. CBDC. The Executive Order also encourages the Federal Reserve to continue its research, development, and assessment efforts for a U.S. CBDC, including development of a plan for broader U.S. government action in support of their work. This U.S. government effort prioritizes U.S. participation in the multi-country development of CBDCs by requesting that its agencies consider the potential benefits and risks under various designs of a U.S. CBDC.

To achieve such goal, among other requirements, by **Sept. 5, 2022**, the director of the office of science and technology policy and the chief technology officer of the United States, in consultation with the secretary of the treasury, the chair of the Federal Reserve, and the heads of other relevant agencies, must submit to the president a technical evaluation of the technological infrastructure, capacity, and expertise necessary at relevant agencies to facilitate and support the introduction of a U.S. CBDC.

2. Protect U.S. Consumers, Investors, and Businesses

The Executive Order directs the Treasury Department and other agencies to assess and develop policy recommendations to address the implications of the growing digital asset sector and changes in financial markets for consumers, investors, businesses, and equitable economic growth. The Executive Order also encourages regulators to ensure sufficient oversight and safeguard against any systemic financial risks posed by digital assets, and the 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 that consumers, investors, and businesses may potentially face.

To comply with the Executive Order, by **Sept. 5, 2022**, the secretary of the treasury, in consultation with the secretary of labor and the heads of other relevant agencies, including the Federal Trade Commission (FTC), the Securities and Exchange Commission, the Commodity Futures Trading Commission (CFTC), federal banking agencies, and the Consumer Financial Protection Bureau (CFPB), must produce a report to the president on the implications of developments and adoption of digital assets and changes in financial market and payment system infrastructures for U.S. consumers, investors, businesses, and for equitable economic growth. More specifically, the report must:

- address the conditions that would drive mass adoption of different types of digital assets;
- address the risks and opportunities such growth might present to U.S. consumers, investors, and businesses, including the risks to those “most vulnerable to disparate impacts”; and

- include potential regulatory and legislative actions, appropriate to protect U.S. consumers, investors, and businesses, and support expanding access to safe and affordable financial services.

Pursuant to the consumer protection section of the Executive Order, the following additional reports must be delivered to the president:

- **Law Enforcement (by Sept. 5, 2022):** A report by the attorney general, in consultation with other law enforcement agencies, discussing the role of law enforcement agencies in detecting, investigating, and prosecuting criminal activity related to digital assets, including any recommendations on regulatory or legislative actions, as appropriate.
- **Energy Policy (by Sept. 5, 2022):** A report by the director of the office of science and technology policy, in consultation with other agencies, addressing: (i) the effect of cryptocurrencies' consensus mechanisms on energy usage; (ii) potential uses of blockchain that could support monitoring or mitigating technologies to climate impacts; and (iii) the implications of the two foregoing issues for energy policy. This report must be updated within a year of submission.

The Executive Order further encourages various agencies to consider additional matters. For example, the FTC and CFPB are encouraged to consider the extent to which privacy or consumer protection measures within their respective jurisdictions may be used to protect users of digital assets and whether additional measures may be needed. It also encourages the DOJ, CFPB, and FTC to consider how the growth of digital assets may impact competition policy. In addition, the Executive Order also encourages the SEC chair, the CFTC chair, the Federal Reserve chair, the chair of the board of directors of the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) to consider the extent to which investor and market protection measures within their respective jurisdictions may be used to address the risks of digital assets and whether additional measures may be needed.

3. Protect U.S. and Global Financial Stability and Mitigate Systemic Risk

The Executive Order encourages the Financial Stability Oversight Council (FSOC) to identify and mitigate economy-wide (i.e., systemic) financial risks posed by digital assets and to develop appropriate policy recommendations to address any regulatory gaps. To achieve such goals, the Executive Order requires the following report to be delivered to the president:

- **Market Regulation (by Oct. 5, 2022):** A report by the secretary of the treasury, in consultation with the FSOC, outlining the specific financial stability risks and regulatory gaps posed by various types of digital assets and providing recommendations to address such risks, including any proposals for additional or adjusted regulation and supervision as well as for new legislation.

4. Mitigate Illicit Finance and National Security Risks Posed by Illicit Use of Digital Assets

Under the Executive Order, the president is directing all relevant U.S. government agencies to focus their coordinating actions so as to mitigate the risks of crimes such as money laundering, terrorist and proliferation financing, fraud and theft schemes, and corruption, through regulation, supervision, public-private engagement, oversight, and law enforcement. To comply with this key priority, the Executive Order either requires or strongly encourages the following actions:

- **Law Enforcement – within 90 days of submission to the Congress of the National Strategy for Combating Terrorist and Other Illicit Financing:** The attorney general and the heads of relevant agencies, including the secretary of homeland security, may submit supplemental

annexes offering additional views on illicit finance risks posed by digital assets, including cryptocurrencies, stablecoins, CBDCs, and trends in the use of digital assets by illicit actors.

- **Illicit Financing Risk – within 120 days of submission to the Congress of the National Strategy for Combating Terrorist and Other Illicit Financing:** The secretary of the treasury, in consultation with the heads of other relevant agencies, must develop a coordinated action plan based on the strategy’s conclusions for mitigating the digital-asset-related illicit finance and national security risks addressed in the updated strategy.

5. Promote U.S. Leadership in Technology and Economic Competitiveness to Reinforce U.S. Leadership in the Global Financial System

The Executive Order directs the Department of Commerce to work across the U.S. government in establishing a framework to drive U.S. competitiveness and leadership in, and leveraging of, digital asset technologies. Such framework will serve as a foundation for agencies and integrate this as a priority into their policy, research and development, and operational approaches to digital assets.

To achieve such goals, the Executive Order requires, among other things:

- **International Cooperation (by July 7, 2022):** The secretary of commerce and the heads of other relevant agencies must establish a framework for interagency international engagement with foreign counterparts to adapt, update, and enhance the global principles and standards of anti-money-laundering and countering financing of terrorism (AML/CFT) regulation, supervision, and enforcement related to digital assets use and transactions, to reduce inefficiencies in international funds transfer and payment systems.

6. Financial Inclusion – Promote Equitable Access to Safe and Affordable Financial Services

The Executive Order affirms the critical need for safe, affordable, and accessible financial services as a U.S. national interest that must inform the U.S. government’s approach to digital asset innovation, including disparate impact risk.

To achieve such goal, **by July 7, 2022**, the secretary of the treasury, working with all relevant agencies, must produce a report on the future of money and payment systems, to include implications for economic growth, financial growth and inclusion, national security, and the extent to which technological innovation may influence that future.

7. Support Technological Advances and Ensure Responsible Development and Use of Digital Assets

The Executive Order also directs the U.S. government to take concrete steps to study and support technological advances in the responsible development, design, and implementation of digital asset systems while prioritizing privacy, security, combating illicit exploitation, and reducing negative climate impacts.

Conclusion

Although various federal agencies have been taking steps toward the regulation and oversight of digital assets, this Executive Order identifies and prioritizes the analysis that those and other agencies need to undertake in order to achieve a more unified and comprehensive approach to regulation and oversight of digital assets in the United States. The Executive Order does not implement any new regulations or require agencies to adopt any specific rules or approaches. Likewise, the Executive Order does not alter the jurisdiction of any U.S. agency with respect to digital assets, nor suggest that Congress should do so. But its call to action will hasten the federal government's approach to mitigating various perceived risks of digital assets, such as privacy, data security, consumer protection, investor protection, systemic risk, national security, sanctions evasion and climate. Importantly, current events relating to the Russian invasion of Ukraine could change the timeline for many of the initiatives in the Executive Order. The Joint G7 statement issued March 11, 2022, stated, "we will ensure that the Russian state and elites, proxies and oligarchs cannot leverage digital assets as a means of evading or offsetting the impact of international sanctions..." This new policy from the major western nations may lead to earlier movement on policy, and Congress (or federal regulators) could act quickly to implement this new policy into U.S. law.

The Executive Order, although a major step forward in U.S. digital asset policy, leaves numerous questions for digital asset clients as to applicable regulatory frameworks. We expect that, as industry waits for the research outputs the Executive Order requires, government enforcement will remain a key tool for reforming market practices.

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