



Cryptocurrency

What to Watch For

With Republicans taking control of the House, Rep. Patrick McHenry (R-NC) is expected to take over as Chairman of the House Financial Services Committee in the new congress. He has called for legislation to regulate stablecoins as a “first step,” followed by broader legislation defining and regulating digital assets. President Biden issued an Executive Order in March to promote the responsible development of digital assets, which produced multiple administration reports in September on different aspects of digital asset regulation. However, the administration has not yet taken positions on several key issues.

Stablecoins

Congress may reach bipartisan agreement on stablecoin legislation in 2023. Presumed incoming Chairman McHenry has indicated that there is bipartisan agreement on several aspects of stablecoin regulation, including requiring one-to-one backing of stablecoins using a narrow range of qualifying assets, allowing stablecoins to be issued by more than traditional banks, and requiring federal regulation and a special charter. The Biden administration has called for requiring stablecoin issuers to be insured depository institutions. It also supports a comprehensive framework that addresses market integrity, investor and consumer protection, and payment system risks (including entities that perform services related to stablecoins).

SEC and CFTC Jurisdiction

With respect to broader regulation, Congress must agree on a definition of “digital asset” and on the appropriate roles for the Securities and Exchange Commission and the Commodity Futures Trading Commissions. Sens. Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY) introduced comprehensive legislation in the 117th congress that attempted to clarify jurisdiction and define when digital assets should be treated like a security or a commodity. However, incoming Chairman McHenry (R-NC) has said that “I think you have to have a separate regulatory sphere for digital assets that is neither the SEC nor the CFTC ... we have to give [digital assets] a regulator, or a home.” The Biden administration has not taken a position on this issue, and SEC Chairman Gary Gensler has suggested that he already has ample authority under existing law to regulate the “vast majority” of digital assets as securities. The administration also proposes creating authority for federal regulators to supervise the activities of “affiliates and subsidiaries” of crypto-asset entities.

Central Bank Digital Currency

At least two of the Biden administration reports examined technical and design issues related to the establishment of a Central Bank Digital Currency (CBDC), but no specific recommendations were made. The Treasury Department recommended that a CBDC Working Group be formed and encouraged the Federal Reserve to “continue its research and technical experimentation on CBDCs.” A group of eleven Republicans who serve on the House Financial Services Committee told Attorney General Garland on October 5th that “the Federal Reserve does not have the legal authority to issue a CBDC absent action from Congress.” Federal Reserve Chairman Powell has indicated that the Fed is looking closely at both policy and technological issues relating to a CBDC but suggested that he would work with Congress, and it would be “a process of at least a couple of years.”

Energy Use

The White House Office of Science and Technology Policy has proposed limiting or eliminating the use of high energy intensity consensus mechanisms for crypto-asset mining. It has also proposed enabling the Department of Energy and encourage other federal regulators to promulgate and regularly update energy conservation standards for crypto-asset mining equipment, blockchains, and other operations.

Criminal Enforcement

Attorney General Merrick Garland issued a [report on digital assets](#) proposing to expand anti-tip-off provisions of 18 U.S.C. 1510(b) to virtual asset service providers (VASPs) that operate as money services businesses (MSBs); strengthen penalty provisions of 18 U.S.C. 1960 relating to unlicensed money transmitting businesses; amend 18 U.S.C. 3293 to provide a 10-year statute of limitations to all crimes involving the transfer of digital assets; strengthen provisions of federal law relating to gathering evidence of digital asset crimes, including laws requiring record preservation; clarify criminal law venue provisions to “permit prosecution in any district where the victim of a digital assets related offense or other cybercrime is found”; add forfeiture authority to criminal fraud statutes involving commodities (18 U.S.C. 1348; 7 U.S.C. 13(a)(2)); lift the monetary limit on administrative forfeiture of cryptocurrency, currently capped at \$500,000 in 19 U.S.C. 1607.

Congressional Leadership Changes

Rep. McHenry is expected to take over as Chair of the Financial Services Committee, which has jurisdiction over cybersecurity. Rep. Maxine Waters (D-CA) is expected to serve as Ranking Member. On the Senate side, Sen. Ron Wyden (D-OR) is expected to remain the Democratic leader of the Finance Committee, with Sen. Mike Crapo (R-ID) leading the Republicans.

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