

Stepping Back: Five Takeaways From the Digital Assets Executive Order

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Last week, President Biden signed a sweeping Executive Order [on Ensuring Responsible Development of Digital Assets](#) directing more than 20 federal entities to assess the risks and opportunities associated with cryptocurrencies and other digital assets and their underlying technologies across an array of issues.

The Executive Order outlines various broad policy objectives: protecting consumers, investors, and businesses from digital asset risks; mitigating systemic risk to national and global financial markets; mitigating illicit finance and national security risks, including money laundering, cybercrime, ransomware, and terrorism financing; promoting U.S. leadership in digital assets and related technologies; promoting equitable access to safe and affordable financial services; and supporting technological advances that promote the responsible development and use of digital assets.

Takeaways

At more than 5,500 words, the Executive Order covers a lot of ground. Before discussing some of the Executive Order's key topics, we offer five high-level takeaways:

1. A "Whole-of-Government Approach" Beyond U.S. Treasury and Financial Regulators

While one might think of cryptocurrency and other digital assets as primarily a financial matter, the Executive Order takes a broader approach, bringing into the fold the Department of Justice, Department of State, Office of Science and Technology Policy (OSTP), Department of Energy, Environmental Protection Agency, Director of National Intelligence, and the National Climate Advisor, among others. This "[whole-of-government](#)" approach reflects the multifaceted, cross-sectional challenges and opportunities that digital assets present.

2. Significant Coordination Challenges Will Need to Be Overcome

With more than 20 federal entities involved and numerous overlapping action items, coordinating the Executive Order’s directives to form a cohesive regulatory approach is a huge task. The Executive Order assigns responsibility for coordination—including over independent agencies outside the federal executive departments—to the Assistant to the President for National Security Affairs (the President’s National Security Advisor) and the Assistant to the President for Economic Policy (the Director of the National Economic Council), using a [pre-established interagency process](#). To successfully overcome coordination challenges, the federal government will need a collaborative cross-agency approach that builds on and integrates agencies’ prior work on digital assets and that produces a comprehensive, consistent framework for promoting the Executive Order’s policy objectives.

3. The Federal Government Must Carefully Balance Risk and Innovation

The Executive Order’s policy objectives can be distilled into two primary goals: (i) supporting the United States’ leadership in digital asset innovation and economic competitiveness; and (ii) promoting the responsible development of digital assets to reduce risks to consumers, investors, and businesses. Pursuing these goals together will require a balanced appreciation for risk and innovation and, where appropriate, engagement with industry experts and stakeholders. Overly stringent or prescriptive regulations could stymie innovation, while overly lax regulations could leave consumers, investors and others unprotected or hesitant to explore using digital assets.

4. The United States Has Catching Up to Do

The Executive Order’s goal of promoting the United States’ leadership in digital asset innovation and economic competitiveness will require catching up to other jurisdictions that have [taken a leading role in both proposing digital asset regulation](#) and exploring [central bank digital currencies](#). Although the United States has been active in various international fora that have addressed the risks associated with digital assets—such as the [Financial Stability Board](#), [Financial Action Task Force](#), and the [Basel Committee on Banking Supervision](#)—the United States is currently [behind the curve](#).

5. The Executive Order Is a Detailed Roadmap, Not (Yet) a Regulatory Scheme

The Executive Order calls for numerous studies, reports, and a legislative proposal. It could be months or even years before any new rules are proposed as a result of the Executive Order. And although not addressed in the Executive Order, the extent to which action items are delivered timely and made public will help shape public discourse and regulatory strategy. In the meantime, it is worth paying close attention to certain themes in the Executive Order, which could lay a regulatory foundation for years to come. For example, the Executive Order underscores the point that currently no single regulator has broad oversight over crypto firms. Crypto firms outside the federal regulatory perimeter engaging in traditional bank activities (e.g., taking deposits, making loans, and facilitating payments) may be subject to the "same business, same risks, and same rules"¹ principle, meaning these firms may eventually be regulated like banks.

Key Topics of the Executive Order

Central Bank Digital Currencies (CBDCs)

Section 4 of the Executive Order calls for research and development efforts for a potential central bank digital currency (CBDC) in the United States. The Executive Order refers to this work as being of the "highest urgency." This is the only place the Executive Order uses that descriptor.

- **CBDC Report.** By **September 5, 2022**, the Secretary of Treasury, in consultation with other departments and agencies, must submit to the President a report on the future of money and payment systems, which must include an analysis of the potential relationship between a CBDC and private sector-administered assets (e.g., [stablecoins](#)) (the "CBDC Report").
- **CBDC Legislative Proposal.** Also by **September 5, 2022**, the Attorney General, in consultation with the Secretary of the Treasury and the Federal Reserve, must provide to the President an assessment of whether legislative changes would be necessary to issue a U.S. CBDC, if deemed appropriate and in the national interest. By **October 5, 2022**, the Attorney General must provide to the President a corresponding legislative proposal based on the CBDC report and ongoing research at the Federal Reserve.²

Protecting Consumers, Investors, and Businesses

Section 5 of the Executive Order includes a broad set of action items designed to protect markets, investors, and consumers generally, including efforts to expand access to safe and affordable financial services. The directives in this section are designed to address, among other things, risks associated with fraud and theft; privacy and data breaches; unfair and abusive acts or practices; other cyber incidents; and potential disparate financial risks to less informed market participants. Below is a summary of select provisions:

- **CBDC Buildout Analysis.** The Director of OSTP and the Chief Technology Officer of the United States, in consultation with other agencies, must submit to the President by **September 5, 2022**, "a technical evaluation of the technological infrastructure, capacity, and expertise" needed to facilitate and support the introduction of a CBDC system. This technical evaluation is to address: (i) the technical risks associated with emerging and future technological developments, e.g., quantum computing; and (ii) "any reflections or recommendations on how the inclusion of digital assets in Federal processes may affect the work of the United States Government."
- **Competition Policy.** The Executive Order encourages the Attorney General, the Chair of the Federal Trade Commission (FTC), and the Director of the Consumer Financial Protection Bureau (CFPB) to consider potential effects the growth of digital assets could have on competition policy. The potential effects of digital assets on competition policy have received relatively little attention but could be significant as the U.S. regulatory framework develops.
- **Privacy and Consumer Protection.** The Chair of the FTC and the Director of the CFPB have been encouraged to consider within their jurisdictions how privacy or consumer protection measures might be used to protect users of digital assets and whether additional measures are needed.
- **Environmental Challenges and Risks.** The Executive Order calls for a cross-governmental effort to address the environmental challenges and risks associated with digital assets while highlighting the potential for innovation. The Director of OSTP, in consultation with other departments and agencies across the government, must report by **September 5, 2022**, "on the 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."

Promoting Financial Stability and Strengthening Market Integrity

Section 6 of the Executive Order focuses on the role of financial regulators—including the Securities and Exchange Commission (SEC), Commodity Futures Trading Commission (CFTC), CFPB, Federal Reserve, Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC)—in overseeing the financial system and promoting its stability.

- **Financial Stability Risk and Regulatory Gap Analysis.** By **October 5, 2022**, the Secretary of Treasury is to work with the Financial Stability Oversight Council (FSOC), whose voting members include these same financial regulators, to produce a report "outlining the specific financial stability risks and regulatory gaps posed by various types of digital assets and providing recommendations to address such risks." The report is to build on prior analyses and assessments of the FSOC (collectively) and its members. The Executive Order specifically recognizes the important role the FSOC has played in assessing the financial stability risks and regulatory gaps posed by the ongoing adoption of digital assets.

Limiting Illicit Finance and National Security Risks

Section 7 of the Executive Order calls for research on and proposals to mitigate the illicit finance and national security risks posed by digital assets. Specifically, the Executive Order describes the role that digital assets play in facilitating money laundering (including laundering ransomware payments), terrorist financing, and the circumvention of U.S. and foreign sanctions regimes, stating that "it is in the national interest to take actions to mitigate these illicit finance and national security risks through regulation, oversight, law enforcement action, or use of other United States Government authorities."

- **Annex to National Strategy for Combating Terrorist and Other Illicit Financing** ("National Strategy"). Ninety days after the Department of the Treasury submits an updated National Strategy³ to Congress, the 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 and others are to submit an annex to the National Strategy setting out the risks posed by

digital assets, "including cryptocurrencies, stablecoins, CBDCs, and trends in the use of digital assets by illicit actors."

- **Action Plan for Mitigating Risks.** Within 120 days of submission of the National Strategy to Congress, the same officials are required to submit an action plan for mitigating the digital-asset-related risks identified in the National Strategy, which addresses "the role of law enforcement and measures to increase financial service providers' compliance with [anti-money laundering and countering the financing of terrorism] obligations."
- **Notice of Rulemaking by Treasury.** Within 120 days of completion of the updated National Strategy and several enumerated assessments on AML and terrorism financing risks (which the Department of Treasury [published on March 1, 2022](#)), the Secretary of Treasury must notify relevant agencies of "any pending, proposed, or prospective rulemakings to address digital asset illicit finance risks."

Fostering International Cooperation and United States Competitiveness

Finally, section 8 of the Executive Order focuses on fostering international cooperation and U.S. competitiveness with respect to digital assets and financial innovation. The Biden Administration will continue its engagement on these topics through the G7, G20, Financial Action Task Force, and Financial Stability Board.

- **Development of Interagency/International Engagement Framework and Follow-up Reporting.** By **September 5, 2022**, the Secretary of Treasury (in consultation with other agencies) must "establish a framework for interagency international engagement with foreign counterparts . . . to adapt, update, and enhance adoption of global principles and standards for how digital assets are used and transacted, and to promote development of digital asset and CBDC technologies" consistent with U.S. values and legal requirements. Follow-up reporting on "priority actions" taken under this framework is due by **September 5, 2023**.
- **Development of U.S. Economic Competitiveness Framework.** By **September 5, 2022**, the Secretary of Commerce (in consultation with other agencies) "shall establish a framework for enhancing United States economic competitiveness in, and leveraging of, digital asset technologies."

- **Strengthening International Law Enforcement.** By *June 7, 2022*, "the Attorney General, in consultation with the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security, shall 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."

Conclusion

Implementation of the Executive Order—including potential legislation—could significantly shape the legal landscape of many aspects of digital assets and related technologies. Digital asset companies should monitor implementation activities closely and continually assess their regulatory outlook and compliance strategies.

Members of Davis Wright Tremaine's Digital Assets and Blockchain Team will be monitoring relevant developments stemming from this Executive Order.

Endnotes

¹ Executive Order at section 2(b).

² The EO's focus on CBDCs could be viewed in the broader context as a response to the Federal Reserve's [CBDC Discussion Paper](#) for comment (as discussed in [our recent blog post](#)), where the Federal Reserve noted that developing a U.S. CBDC can only occur following "clear support from the executive branch and from Congress, ideally in the form of a specific authorizing law."

³ The National Strategy is prepared by the Department of the Treasury in consultation with other federal agencies pursuant to sections 261 and 262 of the Countering America's Adversaries Through Sanctions Act (CAATSA). Treasury published prior versions of the National Strategy in [2020](#) and [2018](#). Treasury indicated in a March 1, 2022, [press release](#) that the 2022 National Strategy would be published "in the coming weeks."