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US Federal Crypto and Digital Assets Legislation

by Practical Law Finance with Stephen T. Gannon, Elizabeth Lan Davis, and Max Bonici, Davis Wright Tremaine LLP*

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A Practice Note that provides a summary of key federal legislative efforts to create a regulatory framework for cryptocurrency and digital assets in the US. This Practice Note examines the Guiding and Establishing National Innovation for US Stablecoins (GENIUS) Act, the first major federal crypto legislation enacted in the US, which establishes a framework for payment stablecoins. It details the requirements for permitted payment stablecoin issuers (PPSIs), including reserve maintenance, marketing standards, and anti-money laundering (AML) compliance under the Bank Secrecy Act (BSA). This resource also discusses significant proposals for a broader crypto market structure, including the Digital Asset Market Clarity Act of 2025 (Clarity Act) and its predecessor, the Financial Innovation and Technology for the 21st Century Act (FIT21). These bills aim to clarify jurisdiction between the Commodity Futures Trading Commission (CFTC) over digital commodities and the Securities and Exchange Commission (SEC) over digital asset securities. This Note also surveys numerous other noteworthy legislative proposals addressing digital assets.

Legislators have introduced dozens, if not hundreds, of bills in Congress to regulate cryptocurrency and digital assets (collectively, crypto). Momentum has been building for the creation of a federal crypto regulatory framework for many years. These efforts accelerated following the 2024 US elections, which installed a pro-crypto administration that has taken steps to remove regulatory burdens imposed on crypto by prior administrations (see Practice Note, Regulation of Crypto and Digital Assets Under Second Trump Administration: Overview). The removal of these regulatory barriers has sparked enthusiasm in Congress for enacting a regulatory framework that is accommodating to blockchain and crypto/digital assets.

This Note provides a summary of key federal crypto and blockchain-related legislative efforts, including the Guiding and Establishing National Innovation for US Stablecoins Act (GENIUS Act), the first major federal crypto legislation signed into law is the US, which creates a regulatory framework for payment stablecoins, signed into law by President Trump on July 18, 2025. This Note also covers the Digital Asset Market Clarity Act of 2025 (Clarity Act), as well as its predecessor bill, the Financial Innovation and Technology of the 21st Century Act (FIT21).

Setting the Table in the Senate

On January 15, 2025, Senator Tim Scott (R-SC), Chair of the Senate Committee on Banking, Housing, and Urban Affairs, announced legislative and oversight priorities for the committee for the 119th Congress, including development of a legislative framework for digital assets (see US Senate Press Release: Scott Announces Banking Committee Priorities for the 119th Congress). Sen. Scott noted in connection with this priority:

> "Under Chair Gensler, the SEC refused to provide clarity to the cryptocurrency industry, which has forced projects overseas. Moving forward, the committee will work to build a regulatory framework that establishes a tailored pathway for the trading and custody of digital assets that will promote consumer

choice, education, and protection and ensure compliance with any appropriate Bank Secrecy Act requirements. The committee will also foster an open-minded environment for new, innovative financial technologies and digital asset products, like stablecoins, that promote financial inclusivity."

On January 23, 2025, Sen. Scott and ranking member Sen. Elizabeth Warren (D-MA) announced the creation of the Subcommittee on Digital Assets, to be chaired by Sen. Cynthia Lummis (R-WY). The announcement stated that the subcommittee "will ensure the committee is at the forefront of legislation to provide regulatory clarity for the industry." (See US Senate Press Release: Banking Committee Approves Subcommittee Assignments for the 119th Congress.)

Guiding and Establishing National Innovation for US Stablecoins (GENIUS) Act

On July 18, 2025, President Trump signed into law the Guiding and Establishing National Innovation for US Stablecoins (GENIUS) Act, creating a federal regulatory framework for "payment" stablecoins. The GENIUS Act represents the first major crypto legislative framework enacted into law in the US. The GENIUS Act is expected to become effective on the earlier of:

- 18 months after the date of enactment.
- 120 days after the primary federal payment stablecoin regulators issue final regulations implementing the Act.

The GENIUS Act creates federal licensing and, in some cases, provides for state licensing and regulatory requirements for so-called payment stablecoins, electronic tokens that may be redeemed by the token holder for US dollars. The Act provides requirements for the custody and safekeeping of liquid reserves to back the tokenholder's redemption rights. The goal of the Act is for parties to treat a payment stablecoin as a means of payment, just like US dollar currency, because of the value of the redemption right backed by the liquid reserves.

Who May Qualify as a PPSI and Relevant Exemptions

Under the GENIUS Act, permitted payment stablecoin issuers (PPSIs) include persons "formed" in the US that are:

- A federal qualified payment stablecoin issuer, which includes:
  - a nonbank entity, other than a state-qualified payment stablecoin issuer, approved by the Comptroller of the Currency (OCC) to issue payment stablecoins;
  - an uninsured national bank that is chartered by the OCC and approved by the OCC to issue payment stablecoins; or
  - a federal branch of foreign bank that is approved by the OCC to issue payment stablecoins.
- A subsidiary of an FDIC-insured depository institution (IDI) that has been approved to issue payment stablecoins.
- A state-qualified payment stablecoin issuer, which is approved to issue payment stablecoins by a state payment stablecoin regulator. PPSIs may only operate under state supervision if they issue less than $10 billion in stablecoins. The state regulator must have in place a PPSI payment stablecoin regulatory framework that has been approved by the Secretary of the Treasury as substantially similar to the federal framework.

Non-US entities meeting certain limited criteria may be exempted from the prohibition on non-US PPSIs if they:

- Are subject to a regulatory regime comparable to the US, as determined by the Secretary of the Treasury, which determination will be made no later than 210 days after receipt of a determination request.
- Registered with the Office of the OCC.
- Hold their reserves at a US financial institution.

The Act limits who may issue a payment stablecoin in the US to PPSIs and makes it unlawful for anyone other than a PPSI to issue a payment stablecoin. The GENIUS Act allows the applicable federal regulator (for example, prudential bank regulators in the case of an IDI subsidiary) to create, receive, and review applications from prospective payment stablecoin issuers. Once approved, the federal payment stablecoin regulator will oversee permitted issuer activities, which include periodic examinations of each PPSI.

PPSI Requirements

The GENIUS Act requires each PPSI to:

- Maintain reserves backing its payment stablecoins on at least a 1-to-1 basis consisting of:
  - US coins and currency;
  - funds held as demand deposits at IDIs;
  - Treasury bills, notes, or bonds with remaining maturity of 93 days or less;
  - funds received under repurchase agreements in which the PPSI is seller of securities that are backed by Treasury bills with a maturity of 93 days or less (see Practice Note, Repos: Overview);
  - reverse purchase agreements in which the PPSI is purchaser of securities that are collateralized by Treasury notes, bills, or bonds on an overnight basis;
  - securities issued by an investment company registered under the Investment Company Act of 1940, or other registered government money market fund that are invested solely in underlying assets described above; or
  - any of the above in tokenized form.
- Publicly disclose its redemption policy.
- Establish procedures for timely redemption of outstanding payment stablecoins.
- Publish the monthly composition, certified by its chief executive officer and chief financial officer subject to criminal penalties for knowingly false certification, of its reserves on its website, including:
  - the total number of outstanding payment stablecoins issued; and
  - the amount and composition of the reserves maintained.

The GENIUS Act prohibits the reserves maintained by PPSIs from being pledged, rehypothecated, or reused, except for the purpose of liquidity to meet reasonable expectations regarding requests to redeem payment stablecoins.

Along with the requirement to maintain a reserve, the GENIUS Act limits stablecoin activity by PPSIs to:

- Issuing payment stablecoins.
- Redeeming payment stablecoins.
- Managing related reserves.
- Providing custodial or safekeeping services for payment stablecoins, required reserves, and private keys used to access stored payment stablecoins.
- Undertaking other functions that directly support the work of issuing and redeeming payment stablecoins.

Other noteworthy aspects of the law include:

- **Auditing.** Annual audited financial statements are required for PPSIs with more than $50 billion in market capitalization.
- **Marketing.** The Act establishes strict marketing standards for payment stablecoins:
  - prohibiting any representation that payment stablecoins are backed by the full faith and credit of the US, guaranteed by the US government, or covered by FDIC insurance, making it unlawful to mislead consumers about government backing or the insurance status of payment stablecoins;
  - prohibiting payment stablecoins from being marketed in a way that a reasonable person would perceive the stablecoin to be legal tender, issued by the US, or guaranteed or approved by the US government; and
  - prohibiting the marketing of a digital asset as a payment stablecoin unless the digital asset is compliant with the provisions of the GENIUS Act.
- **Risk management.** Destabilizing runs may be mitigated through a regulatory framework that includes:
  - diversification requirements for reserve assets;
  - interest rate risk-management standards;
  - capital, liquidity, and risk management requirements; and
  - a prohibition on riskier reserve assets like corporate debt or equities.
- **State regulation.** State regulators are required to implement payment stablecoin frameworks that are substantially similar to the federal framework. Larger state-regulated issuers must either be overseen by a primary federal payment stablecoin regulator in addition to their state regulator, seek a waiver to be exempt from federal oversight, or halt new issuance once they surpass the $10 billion threshold.
- **Bankruptcy priority for coinholders.** In the event of a PPSI's insolvency or bankruptcy, the claims of holders of permitted payment stablecoins are prioritized over all other creditors on an expedited basis. Under Sections 10(c)(3) and 11(a) of the GENIUS Act, if a PPSI becomes subject to an

insolvency proceeding, the redemption right claim of the stablecoin holder will have priority over all other claims against the PPSI, whether or not the stablecoin holder's claim may be satisfied from the liquid reserves maintained by the PPSI. Further, Section 11(e)(3) of the GENIUS Act provides that stablecoin reserves are not property of the PPSI's bankruptcy estate, which means that the reserves cannot be surcharged under section 506(c) of the Bankruptcy Code for any expenses of the PPSI estate representative in preserving the reserves. For further information on the bankruptcy and insolvency provisions of the GENIUS Act, see Expert Q&A on the Insolvency Provisions of the GENIUS Act.

Treasury Issues Request for Comment in Connection with GENIUS Act

On August 18, 2025, Treasury issued a request for comment required by the GENIUS Act, fulfilling Treasury's obligation under to section 9(a) of the GENIUS Act. The request for comment offers the opportunity to provide feedback on "innovative or novel" methods, techniques, or strategies that regulated financial institutions use, or could potentially use, to detect illicit activity, such as money laundering, involving digital assets.

In particular, Treasury requests comment on "application program interfaces," artificial intelligence, digital identity verification, and use of blockchain technology and monitoring. The request acknowledges that innovative tools are critical to advancing efforts to address illicit finance risks in crypto and digital assets but can also present new resource burdens for financial institutions. As required by the GENIUS Act, Treasury will use public comments to inform research on the effectiveness, costs, privacy and cybersecurity risks, and other considerations related to these tools.

Public comment is due by October 17, 2025. Comments may be viewed publicly viewable at www.regulations.gov.

BSA/AML and Sanctions Obligations of PPSIs

Under the GENIUS Act, PPSIs are recognized as financial institutions for purposes of the BSA. By classifying PPSIs as financial institutions under the Bank Secrecy Act (BSA), the GENIUS Act requires them to:

- Maintain an effective anti-money laundering (AML) and sanctions compliance program, including risk assessments, sanctions list verification, and appointment of a compliance officer.
- Retain appropriate records of payment stablecoin transactions.
- Monitor and report suspicious activity.
- Implement policies to block, freeze, and reject transactions that violate federal or state laws.
- Establish a customer identification program, verifying account holders and high-value transactions, as well as conducting enhanced due diligence where necessary.

The GENIUS Act further:

- Mandates that PPSIs, including any foreign issuers listed on the secondary market, maintain the technical ability to freeze and burn wallets to ensure compliance with lawful orders. PPSIs must demonstrate technical capacity and coordinate with law enforcement as a condition of participating in US secondary markets. If foreign issuers fail to comply with lawful orders, the US Treasury Department would be required to designate them as non-compliant.
- Requires the Secretary of the Treasury, where possible, to coordinate with a PPSI before blocking transactions involving foreign entities to ensure compliance.

Under Section 9 of the GENIUS Act, beginning 30 days after enactment, the Secretary of the Treasury is required to open a 60-day public comment period to identify "innovative or novel" methods, techniques, or strategies that regulated financial institutions use, or have the potential to use, to detect illicit activity, such as money laundering, involving digital assets, including comments with respect to artificial intelligence and use of blockchain technology and monitoring. After this public comment period, the Secretary of the Treasury is directed to conduct further research on these. The US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). is then required to issue guidance for public comment no later than three years after enactment of the GENIUS Act, based on the results of this research, including standards for PPSIs to identify and report illicit activity involving PPSIs.

Other Parameters for PPSIs

The GENIUS Act addresses conflict-of-interest and other concerns by:

- **Limiting interest-bearing payment stablecoins.** The GENIUS Act prohibits the offering of yields or interest on stablecoins and is designed to maintain their function primarily as a medium of exchange rather than as investment vehicles.
- **Imposing restrictions on technology companies.** The Act prohibits large technology firms from issuing stablecoins. This measure is designed to prevent potential monopolistic practices and help ensure that financial services remain separate from major technology platforms.
- **Requiring enhanced oversight of foreign payment stablecoin issuers.** The GENIUS Act introduces stricter regulatory oversight for foreign entities issuing payment stablecoins. This includes compliance with US regulations to prevent illicit financial activities and ensure a level playing field for domestic and international issuers.

Further Regulatory Action Required for Implementation of the GENIUS Act

The following further action is required by certain federal and state regulators to implement the GENIUS Act:

- Not later than one year after the date of enactment, each primary federal payment stablecoin regulator, the Secretary of the Treasury, and each state payment stablecoin regulator must issue regulations to carry out the GENIUS Act through notice and comment rulemaking.
- Federal payment stablecoin regulators, the Secretary of the Treasury, and state payment stablecoin regulators should coordinate, as appropriate, on the issuance of any regulations to implement the GENIUS Act.
- Not later than 180 days after the effective date of the GENIUS Act, each federal banking agency must submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that confirms and describes the regulations promulgated to carry out the GENIUS Act.

Background on GENIUS Act

The GENIUS Act was initially introduced on February 4, 2025 by US Senators Bill Hagerty (R-TN), Cynthia Lummis (R-WY), and Kirsten Gillibrand (D-NY), joined by Sen. Scott. Senators Lummis and Gillibrand had previously proposed a version of the GENIUS Act, the Lummis-Gillibrand Payment Stablecoin Act, which also generated bipartisan support in April 2024 (see Lummis-Gillibrand Payment Stablecoin Act and Legal Update, Senators Introduce Bipartisan Legislation to Create US Stablecoin Regulatory Framework). The Senate passed the GENIUS Act, with amendments proposed by Senator Hagerty on June 17, 2025 by a 68-30 vote. The House passed the amended Senate version on July 17, 2025 by a vote of 308-122, sending the bill to President Trump, who signed it into law on July 18, 2025.

Federal legislators had introduced a number of stablecoin bills in Congress. However, stablecoin legislation lagged, along with other crypto legislative efforts, due to deprioritization of crypto under the Biden administration. As a result, the Lummis-Gillibrand Payment Stablecoin Act and other stablecoin legislation failed to advance. However, the Lummis-Gillibrand Payment Stablecoin Act was refreshed and rebranded as the GENIUS Act, generating renewed support among federal legislators.

Proponents of crypto legislation long asserted that stablecoins provided “low hanging fruit” for legislators and would be among the first crypto items tackled by Congress under the second Trump Administration. Momentum accelerated in both houses during 2025 to fast track stablecoin legislation.

Anticipated Impact

Because the GENIUS Act creates a market for privately issued stablecoins, it has been criticized for potentially creating systemic risk in the nonbank sector or a digital shadow banking sector that is not subject to prudential regulation. Conflict-of-interest concerns have also been raised by some regarding involvement of members of government in private stablecoin issuance. Other parties advocated for a comprehensive crypto bill and opposed “standalone” stablecoin legislation.

Additionally, potential large-scale impact on the demand for US Treasuries is anticipated, as these assets will now be needed for PPSI reserve accounts. This has the potential to dramatically impact the global US Treasury markets and counter macro factors that have weakened the status of the US dollar as the world’s top reserve currency.

Proposals for a Comprehensive Regulatory Framework for Crypto and Digital Assets

Digital Asset Market Clarity Act of 2025 (Clarity Act)

On May 29, 2025, House Agriculture Committee Chair French Hill introduced a draft of the Clarity Act (H.R.3633), designed to establish a regulatory framework for digital assets in the US (see US House Committee Press Release: Hill Thompson, Steil, and Johnson Release Digital Asset Market Structure Discussion Draft). The Clarity Act was passed by the US House of Representatives on July 17, 2025 by a vote of 294-134 and will now be considered by the US Senate. The Clarity Act is an updated version of, and replaces, the Digital Asset Market Structure Act (prior draft), which replaced the prior House crypto market structure bill, FIT21 (see Financial Innovation and Technology of the 21st Century Act).

Among other things, the bill would:

- Like most other major federal crypto market structure bills, provide the Commodity Futures Trading Commission (CFTC) with primary regulatory jurisdiction over digital commodity cash/spot markets that occur on or with the following types of CFTC-registered entities that would be created under the bill:
  - digital commodity exchanges;
  - digital commodity dealers; and
  - digital commodity brokers.
- Create a comprehensive federal regulatory framework under the Commodity Exchange Act (CEA) for the registration, oversight, and supervision of digital commodity brokers and dealers. This would require these firms to register with the CFTC, meet capital and risk-management requirements, and comply with recordkeeping, reporting, business conduct, and customer protection standards.
- Subject customer funds held by a digital commodity broker or dealer to comprehensive segregation and commingling restrictions. These funds would be required to be held by a qualified digital commodity custodian. A customer of a digital commodity broker or dealer would be permitted to elect to participate in any blockchain services facilitated by the broker or dealer, such as staking, subject to requirements and limitations imposed by the CFTC. Digital commodity brokers and dealers would be required to be members of a registered futures association (the National Futures Association (NFA)).
- Establish a process by which a registered entity may determine that digital commodities are eligible to be traded on or through entities registered with the CFTC. The process would require a registered entity to submit a certification to the CFTC that the digital commodity meets the requirements of the CEA. The CFTC would then have up to 80 days to review the certification for its accuracy, completeness, and veracity. This process appears designed to function similarly to the CFTC's made available to trade (MAT) process for swap trade execution (see Practice Note, US Derivatives Regulation: Swap Clearing and Trade Execution: The CFTC MAT Rules).
- Provide for the registration and regulation of digital commodity exchanges. Registered digital commodity exchanges would be required to comply with core principles that include listing standards, treatment of customer assets, trade surveillance, capital, conflicts of interest, reporting, and system safeguard. The requirements appear designed to mimic the CFTC's framework for derivatives clearing organization (DCOs), designated contract markets (DCMs) and swap execution facilities (SEFs) (see Practice Note, US Derivatives Regulation: Derivatives Clearing Organization (DCO) Rules, Amendments, and Core Principles).
- Subject digital commodity exchanges to comprehensive requirements to segregate customer funds with a qualified digital commodity custodian, provide risk-appropriate disclosures to retail customers, designate a chief compliance officer, register with a registered futures association if they hold customer funds, and comply with any rules the registered futures association imposes.
- Permit digital commodity exchanges to list only those digital commodities "that are not readily susceptible to manipulation" and for which they have made public disclosures regarding source code, transaction history, and digital asset economics.
- Require futures commission merchants (FCMs) to hold customer digital commodities with a qualified digital commodity custodian.
- Prevent the SEC from blocking a trading platform from operating under an exemption solely because

it trades digital commodities or permitted payment stablecoins.

- Exclude digital commodities sold pursuant to an investment contract from being considered investment contracts themselves.
- Provide that secondary-market digital commodity transactions that do not provide or represent rights in the issuer or another business would not be considered investment contracts under the securities laws.
- Provide an exemption from securities laws for a digital commodity issuer's sale of digital commodities in a capital raise that satisfies certain disclosure requirements and meets conditions related to the blockchain system and the sale (see Exemption for Offers and Sales of Digital Commodities from Securities Laws Under the Clarity Act).
- Creates the concept of a blockchain "maturity" self-certification process to address customer protection concerns under which digital commodity issuers would be permitted to certify, accompanied by detailed disclosures, to the SEC that the blockchain relating to a digital commodity is mature and therefore exempt from application of the securities laws (see Deemed Maturity Under the Clarity Act). Issuers would be required to file certain disclosures until a defined period after the blockchain system is certified as mature. The bill would authorize the SEC to issue rules identifying conditions by which a blockchain system can be considered mature.
- Create a rebuttable presumption that a self-certified blockchain and token are mature, which the Securities and Exchange Commission (SEC) would have 60 days to contest, subject to an appeals process in federal court. If rejected, a blockchain would not be permitted to re-certify for 90 days from the rebuttal.
- Establish requirements for project insiders to sell their digital commodities both before and after the maturity of the blockchain system and related digital commodity. The requirements would include limitations on quarterly sales, and pre- and post-sale disclosure obligations.
- Subject any person who asserts controls of a mature blockchain system to certain SEC reporting requirements and restrictions.
- Give the SEC jurisdiction over digital commodity activities undertaken by SEC-registered broker-dealers and national securities exchanges via a notice-registration process with the CFTC.
- Permit an SEC-registered broker or dealer to register with the CFTC as a digital commodity broker or dealer in order to list or trade contracts of sale for digital commodities.
- Grant the SEC anti-fraud and anti-manipulation authority over transactions with or involving permitted payment stablecoins and digital commodities that occur on or with an SEC-registered entity.
- Provide the CFTC with authority over transactions with or involving a permitted payment stablecoin that occur on or with a CFTC-registered entity.
- Set out requirements for qualified digital commodity custodians, which would be subject to adequate supervision and appropriate regulation by certain federal, state, or foreign authorities. The CFTC would be granted authority to further define minimum standards for adequate supervision and appropriate regulation and to provide rules for CFTC registered entities to custody digital commodities.
- Prevent federal regulators from imposing requirements on financial institutions to include customer assets as liabilities on their balance sheets or from holding additional capital against these assets, except as necessary to mitigate against operational risks as determined by the appropriate federal or state regulator.

The Clarity Act deviates from the prior draft regarding certain requirements and deadlines, including that it would:

- Require the CFTC to make a certification decision regarding eligibility of a digital commodity within 20 days; in the event no decision is made, the certification would be approved.
- Not require digital commodity exchanges to trade and list only those digital commodities "that are not readily susceptible to manipulation."

Probably the most significant difference between the Clarity Act and the prior draft are their procedural dispositions. The prior draft was issued for discussion purposes and as a preliminary step to obtain public feedback. The Clarity Act has been formally introduced, meaning it will be assigned to a US House of Representative committee where it will be researched, discussed, and amended as needed.

Exemption for Offers and Sales of Digital Commodities from Securities Laws Under Clarity Act

The offer or sale of an investment contract involving units of a digital commodity by a digital commodity issuer would be exempt from the application of the securities laws if, among other requirements:

- The blockchain system to which the digital commodity relates, together with the digital commodity, is certified as a mature blockchain system or the issuer intends for the blockchain system to which the digital commodity relates to be a mature blockchain system not later than the later of:
  - four years after the first sale of the digital commodity; or
  - four years after the effective date of the provision.
- The aggregate amount of units of the digital commodity sold by the digital commodity issuer in reliance on this exemption, during the 12-month period preceding the date of the transaction, including the amount sold in the transaction, does not exceed $150 million (annually adjusted by the SEC to reflect the change in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor).
- After the completion of the transaction, a purchaser does not own more than 10% of the total amount of the outstanding units of the digital commodity.

Deemed Maturity Under Clarity Act

A digital commodity issuer, related person, or affiliated person would be permitted to self-certify that a blockchain system, together with its related digital commodity, is deemed mature and therefore exempt from application of the securities laws.
A blockchain system, together with its related digital asset, is deemed mature if it meets all of the following requirements:

- The digital commodity has a market value that is substantially derived from the programmatic functioning of the blockchain system.
- The development of the mechanisms has been substantially completed.
- The blockchain system allows network participants to engage in the activities the blockchain system is intended to provide, including:
  - using, transmitting, or storing value, or otherwise executing transactions, on the blockchain system;
  - deploying, executing, or accessing software or services, or otherwise offering or participating in services, deployed on or integrated with the blockchain system;
  - participating in services, deployed on or integrated with the blockchain system;
  - participating in the consensus mechanism, transaction validation process, or decentralized governance system of the blockchain system; or
  - operating any client node, validator, sequencer, or other form of computational infrastructure with respect to the blockchain system.
- The blockchain system is composed of source code that is open source and does not restrict or prohibit based on the exercise of unilateral authority any person who is not a digital commodity issuer, related person, or an affiliated person from engaging in the activities the blockchain system is intended to provide.
- The blockchain system's operations and functions are rules-based, determined by the system's source code, and do not involve necessary reliance on any person.
- No person or group of persons under common control:
  - has the unilateral authority, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, to control or materially alter the functionality, operation, or rules of consensus or agreement of the blockchain system;
  - beneficially owns, in the aggregate, 20% or more of the total amount of units of the digital commodity; or
  - where the blockchain system can be altered by voting power, has the unilateral authority to direct the voting, in the aggregate, of 20% or more of the outstanding voting power of the blockchain system by means of a related digital commodity, nodes or validators, a decentralized governance system, or otherwise.
- The digital commodity issuer, any affiliated person, or any related person does not possess a unique permission or privilege to alter the functionality or operation of the blockchain system, unless the alteration:

  - addresses, according to a rules-based process, vulnerabilities, errors, regular maintenance, or cybersecurity risks of the blockchain system that affect the programmatic functioning of the blockchain system; or
  - is adopted through the consensus or agreement of a decentralized governance system.

Under the bill, a blockchain system, together with its digital commodity, would not be precluded from being considered a mature blockchain system solely based on a functional, administrative, clerical, or ministerial action of a decentralized governance system, including any such action taken by a person acting on behalf of and at the direction of the decentralized governance system, as determined by the CFTC and consistent with the protection of investors, maintenance of fair, orderly, and efficient markets, and the facilitation of capital formation.

Any person that asserts control of a blockchain system, together with its related digital commodity, following any certification of such system as a mature blockchain system, would be subject to certain SEC reporting requirements and restrictions.

Other Noteworthy Elements of Clarity Act

The bill would also:

- Establish offices of innovation within each division of the SEC, which would be responsible for shaping the SEC's approach to technological advancements, examining financial technology innovations among market participants, and coordinating the SEC's response to emerging technology in financial, regulatory, and supervisory systems.
- Establish LabCFTC within the CFTC, which would continue to serve as an information source for the CFTC on fintech innovation and as a forum for innovators seeking a better understanding of the CFTC's regulatory framework. The bill would require LabCFTC to submit an annual report to Congress on its activity. (For information on LabCFTC, see Legal Updates, LabCFTC Issues Primer on Digital Assets and CFTC Launches LabCFTC Fintech Initiative.)
- Require the CFTC and the SEC to conduct a joint study on decentralized finance (DeFi) and submit a report to Congress one year after enactment.
- Require the Government Accountability Office (GAO) to conduct a report on DeFi and submit it to Congress one year after enactment.
- Require GAO to conduct a study on non-fungible digital assets (NFTs) and make the report publicly available one year after enactment.
- Require the CFTC and the SEC to conduct a study on whether additional guidance or rules are necessary to facilitate the development of tokenized securities and derivatives products. The agencies would submit the report to Congress one year after enactment.

The US Senate will now consider its own crypto market structure bill, the Responsible Financial Innovation Act (RFIA) of 2025. If RFIA is passed by the Senate, a reconciliation would require the formation of a conference committee composed of US House and Senate members. This committee would create a conference report including the final version of the bill. Once a final bill is prepared, the final version will have to pass both chambers.

Responsible Financial Innovation Act of 2025: Senate Banking Committee Crypto Market Structure Discussion Draft

On September 5, 2025, the Senate Banking Committee released a 182-page discussion draft entitled the Responsible Financial Innovation Act of 2025 ("RFIA draft") outlining a proposed digital asset market structure. The Senate Banking Committee previously issued a shorter 32-page initial discussion draft in July, which had built upon the Clarity Act , passed by the House of Representatives (see Digital Asset Market Clarity Act of 2025 (Clarity Act)).
The Senate Banking Committee's latest RFIA draft expands upon the initial discussion draft and covers a number of new areas. While the Senate Banking Committee focuses on SEC-related issues, the Senate Agriculture Committee is widely expected to release its discussion draft covering CFTC-related areas later this month. Twelve Senate Democrats also released a framework on September 9, 2025, which signals bipartisan support for crypto market structure legislation (Senate Democrat Market Structure Framework).

The RFIA draft sets out a number of proposed definitions that are not included in the Clarity Act. For example, the RFIA draft defines an "Ancillary Asset" as an intangible asset, including a digital commodity, that is offered, sold, or otherwise distributed to a person pursuant to the purchase

and sale of a security through an arrangement that constitutes an investment contract. An "Ancillary Asset Originator" is a person who initially offers, sells, or distributes the ancillary asset. The RFIA draft subsequently notes that ancillary assets are not securities and that ancillary assets are not considered securities when traded on secondary markets.

The RFIA draft takes on the Clarity Act's definition of a "Decentralized Governance System," but proposes a definition of "Distributed Ledger," which would mean the technology through which data is shared across a network that creates a public digital ledger of verified transactions or information among network participants and in which cryptography is used to link the data to maintain the integrity of the digital ledger and execute other functions.

Section 101 would insert new language into Section 4B of the Securities Act that would address required disclosures for transactions with ancillary assets by the ancillary asset originator. The SEC would be required to issue guidance on the disclosure responsibilities for those considered joint and several ancillary asset originators within 360 days from enactment.

The RFIA draft also adds a proposed definition "Gratuitous Distributions" of crypto assets, which was not included in the Clarity Act. Gratuitous distributions include self-staking, third-party custodial staking, liquid staking, custodial and ancillary staking services, and air drops. Such distributions would continue to be subject to the anti-fraud and anti-manipulation rules of the SEC, CFTC, and state regulators. Nonetheless, the RFIA draft would require the provision of certain basic corporate information regarding the ancillary asset and its originator, such as:

- The experience of the ancillary asset originator in developing ancillary assets.
- The use of the relevant digital network.
- Promotional activities undertaken by the originator to facilitate the creation or maintenance of a trading market for the ancillary asset.
- A summary of ancillary asset transactions by the originator for the four-year period preceding the furnishing of the disclosure.
- Other economic and technical information relating to the ancillary asset.

The RFIA draft would also provide certain protections for originators of ancillary assets beyond those typically associated with forward-looking statements. For example, the failure of an originator to comply with a provision of the legislation would not cause the ancillary asset to be a security under applicable law. And, while it would be unlawful for an ancillary asset originator to make a false statement in its disclosures, nothing in Section 101 would be construed as creating a private right of action. Neither the SEC nor any private plaintiff would be permitted to initiate any action arising from any offer, sale, or distribution of any ancillary asset occurring before the effective date of RFIA, provided the ancillary asset originator complies with the disclosure requirements noted above.

SEC Regulation Crypto and Other Rulemaking

The RFIA draft would require the SEC to promulgate rules to implement various exemptions for originators of ancillary assets from application of the US securities laws for crypto firms, to be collectively referred to as Regulation Crypto. Some of this activity is likely underway given the announcement by SEC Chair Atkins' of the agency's Project Crypto initiative (see Practice Note, Regulation of Crypto and Digital Assets Under Second Trump Administration: Overview: SEC Project Crypto).

Under the RFIA draft, Regulation Crypto would be required to specify that the US securities laws do not apply to an offer or sale of an investment contract involving an ancillary asset if the offer or sale does not exceed the greater of $75 million or 10% of the total dollar value of outstanding ancillary assets. Regulation Crypto would be required to set out conditions for these exemptions, including that the applicable ancillary asset originator may not:

- Be a development-stage company without a specific business plan or purpose.
- Have indicated that the company's business plan is to merge with or acquire an unidentified company.
- Be an investment company under the Investment Company Act of 1940 or otherwise a statutorily disqualified person.

If an ancillary asset originator seeks an exemption, it must furnish the SEC with a notice of reliance on Regulation Crypto no less than 30 days before the date of the offering. These disclosures may be deemed to be a prospectus or a statement for limited purposes, but may not be deemed to be a registration statement for purposes of Section 11 of the Securities Act.

The SEC would be required to specify that an ancillary asset is not be a disqualifying financial interest under the Securities Act when the market value of the asset is primarily derived, or is reasonably expected to be primarily derived, from either:

- Its system-based utility on a digital network.
- The broader adoption and use of such a system within one year from enactment.

This would appear to exempt utility tokens from the RFIA regulatory framework.

Rules regarding investment contracts would also be required to be promulgated by the SEC within two years of enactment, including a final rule specifying clear criteria and definitions governing the term "investment contract." While the SEC has argued that an actual contract is not required for an investment contract to exist (*SEC v. Terraform Labs Pte. Ltd., 684 F. Supp.3d 170, 193 (S.D.N.Y. 2023*), the RFIA draft provides that a contract would be considered an investment contract only if the contract meets the following elements:

- Investment of money (more than a *de minimis* amount) by an investor.
- An investment made in an enterprise or venture.
- An express or implied agreement is required whereby the issuer makes, directly or indirectly, certain promises to perform entrepreneurial or managerial efforts on behalf of the enterprise.
- The investor reasonably expects profits such as a direct share or participation in the income of the enterprise, return on investment and capital appreciation based on the terms of the agreement, or the totality of the statements made by the counterparty and its agents.
- Profits are derived from entrepreneurial or managerial efforts of the counterparty or its agents on behalf of the enterprise where such efforts are post-sale and essential to the operation or success of the enterprise and are not ministerial, technical, or administrative.

In addition, the rules requiring an investment in an enterprise would not require commonality, and must clarify what constitutes more than a nominal level of entrepreneurial or managerial efforts.

The RFIA draft also includes provisions relating to the SEC's exemptive authority and modernization of the SEC's mission. The SEC's books and records requirements would allow a person to consider records from a distributed ledger system to satisfy its recordkeeping requirements. The SEC is instructed to tailor these regulations to only cover would be reasonably necessary in the public interest or for the protection of investors.

Similarly, Section 109 of the RFIA draft is one of the most far-reaching sections of the draft, which would enact reforms long sought by the crypto industry to modernize the federal securities regulations to accommodate digital asset activities. The RFIA draft defines various terms, including digital asset receipt, liquidity provider token, and vault token, and would require the SEC to take appropriate action to ensure that its regulations, forms, and statements are no longer outdated, unnecessary, or unduly burdensome in light of the unique technological characteristics of digital assets. This would include amending, rescinding, replacing or supplementing existing SEC rules governing custody, transfer agents, clearing and settlement, net capital and customer protection requirements, broker-dealers, alternative trading system (ATS) and exchange registration and conduct standards, issuer disclosure, and reporting requirements.

Protecting Against Illicit Finance

As under certain prior market structure proposals, digital asset service providers would be treated as financial institutions for purposes of the Bank Secrecy Act (BSA) and would be subject to all laws related to:

- Economic sanctions.
- AML.
- Customer identification.
- Due diligence.

The Treasury Secretary would be required to establish risk-based examination standards for financial institutions relating to digital assets. The RFIA draft also addresses the prevention of illicit finance through partnership with the private sector. The Attorney General would be required to designate 10 private sector entities that are money services businesses (MSBs) and 10 private sector entities from the digital asset industry to participate in a pilot program designed to share information about potential illicit finance violations, threats, and emerging risks. Under the RFIA draft, non-controlling developers would not be treated as

money transmitter businesses or engaged in money transmitting (see Exemptions and Safe Harbors; Self-Custody).

To address financial technology protection, the RFIA draft would create an Independent Financial Technology Working Group to Combat Terrorism and Illicit Finance composed of senior-level representatives from across the government as well as individuals from the digital assets industry. The working group would be instructed to conduct research regarding terrorist and illicit use of digital assets and other emerging technologies and develop proposals to improve AML and counterterrorist efforts in the US. The working group would be required to submit a report with its recommendations to Congress and would sunset within four years after enactment.

Not later than 120 days after enactment, the Treasury Secretary would be required to issue guidance clarifying sanctions compliance responsibilities and liabilities of issuers of a payment stablecoin with respect to downstream transactions relating to the stablecoin that take place after the stablecoin is first provided to a customer of the issuer. This guidance would be required to relieve a payment stablecoin issuer from strict liability as long as the stablecoin issuer maintains:

- Processes to conduct due diligence on its primary customers on a risk-based basis.
- Processes and controls to prevent digital addresses listed on an applicable sanctions list from accumulating the payment stablecoin.
- The technological ability to freeze or prevent the transfer of payment stablecoins upon discovery that the digital asset address holding the payment stablecoin is owned by a sanctioned person.

Use of Blockchain by Banks and Financial Institutions

Under the RFIA draft, financial holding companies and national banks would be permitted to use a digital asset or distributed ledger system to perform, provide, or deliver any activity, function, product or service that the financial holding company is otherwise authorized by law to perform, provide, or deliver. This would remove any doubt regarding the ability of financial holding companies and national banks to engage in a broad range of digital asset activities. Section 301(f) of the RFIA draft lists certain activities that would be authorized as part of, or incidental to, the "business of banking," These include:

- Providing custodial, fiduciary, or safekeeping services for digital assets.
- Providing related custodial services for digital assets and distributed ledgers, including staking, facilitating digital asset lending, distributed ledger governance services, and advancing funds for the purchase of digital assets or in respect of distributions on digital assets, whether as principal or agent.
- Facilitating customer purchases and sales of digital assets, providing brokerage services, including clearing and execution services, whether alone or in combination with other incidental activities, facilitating transactions in the secondary market for all types of digital assets on the order of customers, and underwriting, dealing in, or making a market in digital assets.
- Making loans collateralized by digital assets.
- Engaging in payment activities involving digital assets. Holding digital assets as principal or agent for any investment or trading purpose, including to make a market in digital assets.
- Operating a node on a distributed ledger.
- Providing self-custodial wallet software.
- Engaging in derivatives transactions, including related hedging activities.
- Holding as principal digital assets incident to an otherwise permissible activity, including in order to pay fees arising from interactions with the distributed ledger system.
- All such incidental powers as are necessary to carry out any of the activities described above. Subsection 301(h) notes that nothing in Section 301 may be construed to exclude other permissible activities not specifically listed.

The RFIA draft also calls for joint rules for portfolio margining determinations and would require the Federal Reserve, the OCC, and the FDIC to develop, not later than 360 days after enactment, risk-based and leverage capital requirements for insured depository institutions that address netting agreements that provide for termination and closeout netting across multiple types of financial transactions in the event of a default of a counterparty.

Facilitating Innovation

Section 401 of the RFIA draft would establish the "CFTC-SEC Micro-Innovation Sandbox" allowing eligible participants to test and potentially develop innovative financial products. The CFTC and SEC (together, the Commissions) would be required to maintain and publish a list of activities eligible for the sandbox to be periodically updated and reasonably tailored to include activities furthering the purpose of the section and sufficiently flexible to accommodate evolving technological developments. An eligible firm could participate for a period of not more than two years with the possibility of a one-year extension upon permission from one of the Commissions. The Commissions would have joint jurisdiction and could take appropriate steps to facilitate a participant's exit from the sandbox by, for example, providing exemptive, interpretive, or no-action relief, issuing responsive rulemaking, or providing conditional or time-limited relief to bridge final Commission action.

Additionally, the Commissions would be tasked with conducting a comprehensive joint study on the regulatory treatment of tokenized real-world assets, to be completed not later than 360 days after enactment. After the study, notice and comment rulemaking could be undertaken by the Commissions to establish "tailored regulatory pathways for tokens that represent real world assets." The draft would also provide that any instrument that is a security would not be deemed to be a security because it has been tokenized.

On the banking front, within two years of enactment, the Comptroller General would report to Congress on the landscape of existing distributed ledger-based compliance tools, AML practices, sanctions screening, and customer identification checks. The goal would be to evaluate the possibility of registrants satisfying regulatory obligations through on-chain, code-based mechanisms (see Article, Application of Distributed Ledger Technology to Financial Services Regulation and Compliance). Federal financial regulators would also be required to report , no later than one year after enactment and every three years thereafter (for a total of not fewer than 12 years), on the implementation of the RFIA and amendments, as well as any legislative recommendations for further implementation.

Exemptions and Safe Harbors

Software developers participating directly or indirectly in the operation of a distributed ledger system or application, or in a DeFi trading protocol, would be exempted from the RFIA when providing technical assistance. Federal preemption protections for such developers are also provided for in the RFIA draft.

Additionally, the RFIA draft would establish a safe harbor for NFTs under which the offer or sale of an NFT would not be deemed to constitute an offer or sale of a security or investment contract unless the transaction involves all the elements of an investment contract. There are a series of exceptions to this protection such as a mass-minted series of items (this seems to apply to memecoins) or a fractionalized interest in an NFT. Within one year, the Comptroller General would be required to conduct a study of NFTs relating to the size and nature of the NFT market, their various use cases, intellectual property rights, and cybersecurity and market risks.

Another safe harbor would be provided for decentralized physical infrastructure networks (DePINs). DePINs are systems that use distributed ledger technology to coordinate and administer the contribution, operation, or maintenance of physical resources, including devices, data storage, computing power, connectivity, or infrastructure. They often use network tokens, which this section would exempt the securities laws, subject to certain conditions.

As noted above, under the RFIA draft, non-controlling developers would not be treated as money transmitter businesses or engaged in money transmitting or otherwise be subject to any registration requirements. Non-controlling developers or providers refers to those who, in the regular course of operations, do not have the legal right or independent ability to control, initiate, or effectuate transactions involving digital assets to which users are entitled without the approval, consent, or direction of a third party.

Self-Custody and Bankruptcy Priority

Federal agencies would be prohibited from restricting or otherwise impairing the ability of a user to self-custody digital assets using a self-hosted wallet or other means to conduct transactions for any lawful purpose.

As with other crypto market legislative proposals, the RFIA draft would provide protections for customers who have claims in the bankruptcy of a crypto platform or other provider and would ensure that their assets are segregated from those of the bankrupt platform's estate.

Effective Date

Regulations implementing the RFIA, and any amendments thereto, would be required to be promulgated not later than one year after enactment through appropriate notice and comment rulemaking. The RFIA, including any amendments made by it, would take effect on the date that is 360 days after its enactment, except that if a provision requires a rulemaking, that provision would take effect on the later of the date that is 360 days after enactment or 60 days after publication in the *Federal Register* of the final rule implementing the provision.

Senate Democrat Market Structure Framework

On September 9, 2025, a group of 12 Senate Democrats released a framework for crypto market structure legislation designed to close regulatory gaps, create clarity for digital asset businesses and consumers, incorporate digital asset platforms into the federal regulatory framework, and address opportunities and risks created by digital assets. The Senate framework sets out the following principles:

- Granting the CFTC exclusive jurisdiction over the spot market for non-security digital assets.
- Clarifying the legal status of digital assets and regulatory jurisdiction for digital asset developers, investors, and platforms.
- Incorporating digital asset issuers into the federal regulatory framework.
- Incorporating digital asset platforms into the federal regulatory framework.
- Preventing illicit finance in the digital asset space.
- Preventing corruption and abuse in the digital asset space.

The RFIA draft takes a pragmatic, pro-innovation approach which is designed to minimize regulatory burden (for example, by requiring only such information as is necessary and appropriate to protect investors) but calls for significant regulatory innovation and industry and regulatory harmonization, as well as intra-regulator harmonization. While the RFIA draft will have to be reconciled with the Senate Agriculture Committee's discussion draft and conformed with the House's CLARITY Act, it is clear that there is an enormous effort being put into establishing crypto market structure legislation which ultimately will be game-changing for the digital asset industry in the United States.

FIT21

The predecessor House bill to the Clarity Act, the FIT21, was passed by the US House of Representatives on May 22, 2024. Passage of this bill by the full House marked the furthest advance of any federal crypto legislation to date. FIT21 would create a US regulatory framework that would have:

- Granted the CFTC primary regulatory authority over "digital commodities."
- Limited the SEC's jurisdiction over digital assets by narrowing the application of the federal definition of "security" to exclude digital assets offered under an investment contract. This would in effect remove many digital assets from the scope of the federal securities laws.
- Expanded the requirements of the Bank Secrecy Act (BSA) to cover crypto products, including BSA reporting and compliance requirements for crypto products that to date have been unclear.
- Separated digital assets into the following three categories:
  - digital commodities;
  - restricted digital assets; and
  - permitted payment stablecoins.

FIT21 focused on the first two categories, leaving stablecoin regulation largely to the CFTC but for joint rulemaking between the SEC and CFTC in instances where their mandates overlap.

FIT21 would have:

- Established a process to permit secondary market trading of digital commodities initially offered under an investment contract.
- Imposed comprehensive customer disclosure, asset safeguarding, and operational requirements on all entities required to be registered with the CFTC or the SEC.

Under FIT21, certain crypto platforms would have been required to register, as applicable:

- With the CFTC as:
  - a digital commodity exchange;
  - a digital commodity broker; or
  - a digital asset dealer.

- With the SEC as:
  - a digital asset broker;
  - a digital asset dealer; or
  - a digital asset trading system.

FIT21 sets out requirements for these registrants, as well as for registered qualified digital commodity custodians.

FIT21 would allocate primary regulatory authority over digital commodities and the market participants who transact in them to the CFTC and regulatory authority over "restricted digital assets" to the SEC. A key requirement to be classified as a digital commodity is a significant degree of decentralization. FIT21 would allow issuers of crypto investment contracts to self-certify that their products are decentralized digital commodities not subject to SEC oversight. The SEC would then have 60 days to review and challenge the certification that a product is a digital commodity. Those that the SEC successfully challenges would be re-classified as restricted digital assets and subject to the bill's "lighter-touch" SEC oversight regime. (The SEC has suggested that it would be implausible that the SEC could review and challenge more than a fraction of crypto assets.)

Once a blockchain system has been certified as functional and decentralized, the digital commodity must also be certified with the CFTC. Digital commodities would not have the same stringent reporting requirements as restricted digital assets under the SEC, which require investor disclosures twice a year. FIT21 would impose disclosure rules similar to crowdfunding for token offerings of up to $75 million. Retail investors would be permitted to participate, provided the investment does not amount to more than 10% of their income or assets.

The key factor to determine if a cryptocurrency would fall within SEC jurisdiction is the functionality of the blockchain system and the degree of decentralization, which is largely determined by ownership stake or voting power. FIT21 would provide for a certification process, through which a blockchain could be shown to be sufficiently decentralized, permitting the assets on the blockchain to be regulated as digital commodities, rather than securities. FIT21 defines "decentralized" to mean that:

- Within the prior 12-month period, no individual has unilateral authority to control the functionality of operation of the blockchain associated with that digital asset.
- Within the prior 12-month period, no issuer or affiliated person:
  - holds or has held 20% or more of the digital assets issued or used on that blockchain; or
  - unilaterally controls or has controlled 20% or more of the voting power controlling the blockchain on which the digital asset was issued.
- Within the prior three months, no issuer or affiliated or related person has contributed intellectual property to the source code of the blockchain that has materially altered the blockchain's functionality or operation, unless:
  - to address vulnerabilities, errors, cybersecurity risks, or regular maintenance; or
  - implemented through a decentralized blockchain consensus mechanism.

This legislation would provide a procedural pathway for developers in the digital asset space to raise funds from investors and would require them to provide disclosure, including information relating to the digital asset project's operation, ownership, and structure. Exchanges, brokers, and dealers that provide services to digital asset customers would be required to:

- Provide appropriate disclosure.
- Segregate customer funds from their own.
- Reduce conflicts of interest through registration, disclosure, and operational requirements.

FIT21 explicitly states that a digital asset offered or sold or intended to be offered or sold under an investment contract is not, and does not become, a security as a result of being sold or otherwise transferred under that investment contract. This language is explicitly designed to disapply the Supreme Court's *Howey* test (*SEC v. W. J. Howey Co*., 328 U.S. 293 (1946)) to the determination of whether a crypto or digital asset is a security. Under FIT21, a crypto asset would instead be a digital commodity subject to CFTC oversight, and not a security subject to SEC oversight, if the blockchain on which the crypto asset meets the decentralization criteria set out above.

FIT21 would exclude (except for its anti-fraud and anti-manipulation provisions) certain DeFi activities, including:

- Compiling network transactions, operating or participating in a liquidity pool, or relaying, searching, sequencing, validating, or acting in a similar capacity with respect to a digital asset.
- Providing computational work, operating a node, or procuring, offering, or utilizing network bandwidth or other similar incidental services with respect to a digital asset.
- Providing a user-interface that enables a user to read and access data about a blockchain system.
- Developing, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system or software that creates or deploys a wallet or other system facilitating an individual user's ability to safeguard or custody the user's digital assets or related private keys.

It is notable that staked crypto assets are not explicitly mentioned in FIT21. Staked digital assets are locked for a set period of time, typically used to support blockchain operations, with the expectation that one can earn more crypto assets once the lock expires. As such, it is unclear where exchanges that offer staking or blockchains that use staking for governance voting rights would fall in the FIT21 dual SEC-CFTC jurisdiction framework, or if they would fall within it at all.

Also of note, the three-month bar on marketing would likely cause significant disruption to user adoption and hamper growth of the coin. In addition, while the SEC has 60 days to respond to decentralization certification requests by statute, it seems unlikely that a quick turnaround will be feasible in practice, given that that it is not a straightforward assessment and years of litigation have ensued in recent years over whether several other crypto assets are securities.

FIT21 was introduced on July 20, 2023 by US Representative Glenn Thompson (R-PA), US Representative French Hill (R-AR), US Representative Dusty Johnson (R-SD), Whip Tom Emmer (R-MN), and US Representative Warren Davidson (R-OH), with then-House Financial Services Committee Chair Patrick McHenry (R-NC) a co-sponsor (see Legal Update, US House Financial Services Committee Advances Crypto Bills: Financial Innovation and Technology of the 21st Century Act (FIT21)).

Concerns expressed earlier in the legislative process, including in a statement by former SEC Chair Gary Gensler, assert that the legislation would:

- Remove investment contracts that are recorded on a blockchain from the statutory definition of securities and the protections of much of the federal securities laws.
- Allow issuers of crypto investment contracts to self-certify that their products are decentralized "digital commodities" not subject to SEC oversight.
- Specifically exclude crypto-asset trading systems from the definition of an exchange, reducing custody protections for their customers.
- Permit non-accredited investors to purchase crypto assets worth up to 10% of their net worth or annual income before the issuer would be required to provide any disclosure.

The SEC's position on federal crypto legislation, and the FIT21 bill specifically, has no doubt changed under SEC leadership installed by the second Trump Administration.

However, FIT21 was superseded by another House crypto market structure bill (see Digital Asset Market Clarity Act of 2025). While the more recent market structure bill may address certain flaws noted in FIT21, it remains imperfect. There may therefore be further iterations of a crypto market structure bill, which may include many of the concepts from prior bills such as FIT21.

BRIDGE Act

On September 10, 2024, US Representative John Rose (R-TN) introduced the Bridging Regulation and Innovation for Digital Global and Electronic Digital Assets Act (BRIDGE Act), which is designed to provide a blueprint for government and private sector partners to cooperate on a path toward establishing a US regulatory framework for digital assets. The BRIDGE Act proposes a joint advisory committee (JAC) between the SEC and CFTC, which would:

- Provide the SEC and CFTC with advice on rules, regulations, and policies related to digital assets.
- Further the regulatory harmonization of digital asset policy between the SEC and CFTC.

The SEC and CFTC would appoint an aggregate of 20 (or more) non-governmental representatives to serve for a two-year period on the JAC. These representatives would consist of:

- Digital asset issuers.
- Persons registered with the CFTC and SEC and engaged in digital asset related activities.
- Individuals engaged in academic research related to digital assets.
- Digital asset users.

The JAC would also have two designated federal officers or employees and would elect from the JAC members a chair, vice chair, secretary, and assistant secretary. The JAC would be jointly funded by the SEC and CFTC, but JAC members would not be considered employees or agents of the SEC or CFTC simply by virtue of their committee membership. The JAC would meet at least twice annually and submit its findings and recommendations to the SEC and CFTC.

For further detail, see Legal Update, BRIDGE Act Introduced to Facilitate Joint SEC and CFTC Regulation of Digital Assets.

Digital Commodities Consumer Protection Act of 2022

On August 3, 2022, US Senators Debbie Stabenow (D-MI), John Boozman (R-AR), Cory Booker (D-NJ), and John Thune (R-SD) introduced the Digital Commodities Consumer Protection Act of 2022 (DCCPA), authorizing the CFTC to regulate "digital commodity platforms" and "digital commodity" trading. The DCCPA would effectively give the CFTC primary oversight over most crypto trading platforms in the US.

In addition to the authority to register digital commodity platforms, the DCCPA would give the CFTC exclusive jurisdiction over "digital commodity" trades, except transactions in which a merchant or consumer is using a digital commodity solely for the purchase or sale of a good or service. "Digital commodity" is defined as a fungible digital form of personal property that can be possessed and transferred person-to-person without necessary reliance on an intermediary.

Under the DCCPA, digital commodities specifically include "property commonly known as cryptocurrency or virtual currency, such as Bitcoin and Ether" but exclude "an interest in physical commodity, a security, or a digital form of currency backed by the full faith and credit of the United States," effectively excluding security tokens and a US central bank digital currency (CBDC) from CFTC oversight.

For further detail on DCCPA, see Legal Update, Bipartisan Legislation Would Give CFTC Oversight of "Digital Commodity Platforms" and "Digital Commodity" Trading.

Responsible Financial Innovation (RFIA) Act of 2022

On June 7, 2022, US Senators Kirsten Gillibrand (D-NY) and Cynthia Lummis (R-WY) introduced the Responsible Financial Innovation Act (RFIA), which would create a regulatory framework for digital assets. The RFIA is designed to:

- Provide regulatory clarity for agencies charged with supervising digital asset markets.
- Provide a strong, tailored regulatory framework for stablecoins.
- Integrate digital assets into existing tax and banking law.
- Protect consumers.
- Spur innovation in the field of digital assets.

For further detail, see Legal Update, Bipartisan Crypto Legislation Introduced in Congress.

On July 12, 2023, Senators Gillibrand and Lummis reintroduced a revised version of the RFIA based on feedback from regulatory stakeholders, including the SEC and CFTC. As revised, this bill would:

- Require all crypto-asset exchanges to register with the CFTC.
- Establish new penalties related to illicit finance, such as willfully violating money laundering laws and examination standards.
- Impose mandatory segregation and third-party custody requirements on crypto-asset ATMs.

Digital Commodity Exchange Act of 2022

On April 28, 2022, US Representatives Glenn Thompson (R-PA), Ro Khanna (D-CA), Darren Soto (D-FL), and Tom Emmer (R-MN) introduced the Digital Commodity Exchange Act of 2022 (DCEA), which would create a regulatory framework for digital commodity developers, dealers, and exchanges. Key components of the DCEA would:

- Authorize the CFTC to register and regulate trading venues offering spot or cash digital commodity markets as digital commodity exchanges (DCEs).

- Require DCEs to register with the CFTC if they want to offer leveraged trading or list for sale digital commodities that were distributed to individuals before being available to the public.
- Expand the self-certification process under the CEA to DCEs seeking to list new digital commodities for trading.
- Permit asset-backed stablecoin operators to register with the CFTC as fixed-value digital commodity operators.
- Expand the CEA's definition of "futures commission merchant" to include entities that hold customer funds and serve as intermediaries for a registered entity in the trading of, or act as counterparties for the spot or leveraged trading of, digital commodities.

A press release on the DCEA states that it is intended to work with the proposed Securities Clarity Act (see Securities Clarity Act).

Non-Framework Proposals

21st Century Mortgage Act of 2025

On July 29, 2025, US Senator Lummis introduced the 21st Century Mortgage Act of 2025, which would amend Section 302(b) of the Federal National Mortgage Association Charter (12 U.S.C. 1717(b)) and Section 305 of the Federal Home Loan Mortgage Corporation Charter Act (12 U.S.C. 1454) to require government-sponsored lending corporations to consider digital assets when assessing single-family mortgage eligibility.

The 21st Century Mortgage Act would require lenders:

- To consider a borrower's holdings in a digital asset that is evidenced and maintained pursuant to a qualified custodian, without the conversion of the digital asset to US dollars, when evaluating a borrower for a mortgage loan. In doing so, the lender may:
  - apply an appropriate adjustment for market volatility and liquidity of the digital asset;
  - apply an appropriate adjustment for concentration of digital assets as a portion of a borrower's reserves; and
  - periodically review and update any risk-based adjustments applied.
- To submit its proposed methodology for assessing digital assets in evaluating a potential mortgagor's credit profile to its board of directors for approval prior to implementing or materially revising any methodology and submit the proposed methodology to the director of the Federal Housing Finance Agency (FHFA) for review if approved by the board.

The 21st Century Mortgage Act will be referred to the appropriate Senate committee for review and mark-up, after which the committee will vote whether to report the bill to the full senate for consideration.

CBDC Anti-Surveillance State Act

On September 20, 2023, the House Financial Services Committee advanced the CBDC Anti-Surveillance State Act, introduced by US Representative Tom Emmer (R-MN). The proposed legislation would:

- Prevent the Federal Reserve from issuing a CBDC directly to individuals.
- Prohibit the Federal Reserve from indirectly issuing a CBDC to individuals through an intermediary.
- Clarify that the Federal Reserve and US Treasury lack the authority to issue a CBDC without congressional authorization.
- Prohibit the Federal Reserve from using any CBDC to implement monetary policy.

In 2025, House Bill 1919 and Senate Bill 1124 were introduced to the respective chambers, both titled "Anti-CBDC Surveillance State Act," and both of which substantially track the CBDC Anti-Surveillance State Act. On July 17, 2025, H.R. 1919 was passed by the US House of Representatives by a vote of 219-210.

While many nations explore adoption of CBDC, the view in the US is that public CBDC issuance by the federal government stands in direct opposition to the success of the private stablecoin market, which the current administration seeks to facilitate. Indeed, a USD CBDC would obviate the need for USD-pegged crypto assets such as privately issued stablecoins and would functionally eliminate the market for USD-pegged stablecoins.

Deploying American Blockchains Act of 2025

On April 17, 2025, Senator Bernie Moreno (R-OH) announced the Deploying American Blockchains Act of 2025, a bill with bipartisan support that would:

- Require the Secretary of Commerce to lead federal initiatives related to blockchain technology.
- Establish an advisory committee, known as the National Blockchain Deployment Advisory Committee, to encourage the adoption of blockchain technology.

(See Sen. Moreno: New Moreno Bipartisan Bill Would Make U.S. a Leader in Blockchain Development.)

The bill would also:

- Establish the Secretary of Commerce as the principal advisor to the President for policy regarding the deployment, use, application, and competitiveness of blockchain technology.
- Require the Secretary of Commerce to collaborate regularly with private-sector stakeholders to identify prioritized, flexible, repeatable, performance-based, and cost-effective approaches to the deployment of blockchain technology.
- Terminate the National Blockchain Deployment Advisory Committee after seven years and limit membership to the Secretary of Commerce, representatives of federal agencies, and covered non-governmental representatives with expertise related to blockchain technology, as determined necessary by the Secretary of Commerce.
- Require an annual report that includes a description of the Secretary's activities, any recommendations, and emerging risks and long-term trends with respect to blockchain technology.

Strategic Bitcoin Reserve Bill

On March 14, 2025, Congressman Byron Donalds (R-FL) announced the introduction of a one-page bill that would codify President Trump's March 6, 2025 executive order to establish a strategic bitcoin reserve (see Practice Note, Regulation of Crypto and Digital Assets Under Second Trump Administration: Overview: Executive Order to Establish National Strategic Bitcoin Reserve and Digital Asset Stockpile and Congressman Donalds: Donalds Cements President Trump's Strategic Bitcoin Reserve And Digital Asset Stockpile Executive Order Into Legislation). The executive order created:

- The strategic bitcoin reserve, to be capitalized by bitcoin forfeited as part of criminal or civil forfeiture proceedings.
- The US digital asset stockpile, to consist of digital assets other than bitcoin forfeited in criminal or civil forfeiture proceedings.

Congressman Donalds notes that the government will not acquire additional assets for the digital asset stockpile, but the Secretaries of Treasury and Commerce are authorized to develop budget-neutral strategies beyond forfeiture proceedings to acquire additional bitcoin for the bitcoin reserve. Once bitcoin is deposited into the reserve it may not be sold.

Lummis BITCOIN Act to Create Strategic Reserve

On July 31, 2024, US Senator Cynthia Lummis (R-WY) introduced the Boosting Innovation, Technology and Competitiveness through Optimized Investment Nationwide Act of 2024 (BITCOIN Act), designed to establish a strategic Bitcoin reserve. The BITCOIN Act would:

- Establish a decentralized network of secure Bitcoin vaults operated by the US Department of Treasury (US Treasury) with statutory requirements for physical security and cybersecurity for the nation's Bitcoin holdings.
- Implement a 1-million-unit Bitcoin purchase program over a set period of time to acquire a total stake of approximately 5% of total Bitcoin supply, mirroring the size and scope of gold reserves held by the US.
- Be paid for by "diversifying existing funds" within the Federal Reserve System and US Treasury.
- Affirm self-custody rights of private Bitcoin holders and emphasize that the strategic Bitcoin reserve will not infringe on individual financial freedoms.

While the BITCOIN Act has gained little traction to date, interest may grow following the Trump Administration directive to explore the establishment of this reserve in its first crypto executive order (see Legal Update, White House Issues Executive Order to Kickstart Crypto Rulemaking).

Financial Integrity and Regulation Management Act

In addition to his early efforts to prioritize federal crypto legislation generally, Sen. Scott has pledged to address "de-banking," with an emphasis on crypto (see US Senate: Scott Shines Light on Debanking of Americans, Pledges Solutions).

Many assert the entire crypto industry was denied access to banking services under the Biden Administration, in an initiative sometimes referred to as "Operation Choke Point 2.0" (see, for example, FDIC "pause" letters).

In connection with this initiative, on March 6, 2025, Sen. Scott introduced the Financial Integrity and Regulation Management Act (FIRM Act), stating that it is designed to "curtail the political weaponization of Federal banking agencies" by eliminating reputation risk as a component of the supervision of depository institutions. Reputation risk refers to the risk arising from negative public opinion, which may impair a bank's competitiveness by affecting its ability to establish new relationships or services or continue servicing existing relationships.

The introductory text of the FIRM Act asserts that the use of reputation risk in supervisory frameworks encourages federal banking agencies to "regulate depository institutions based on the subjective view of negative publicity and provides cover for the agencies to implement their own political agenda unrelated to the safety and soundness of a depository institution." The FIRM Act notes that federal banking agencies have in fact used reputation risk to "limit access of federally legal businesses and law-abiding citizens to financial services in 2018 when the Federal Deposit Insurance Corporation acknowledged that the agency used reputation risk reviews to limit access to financial services by certain industries, commonly known as 'Operation Choke Point.'" The FIRM Act notes further that reputation risk does not appear in any statute and is an unnecessary and improper use of supervisory authority that does not contribute to the safety and soundness of the financial system.

On March 20, 2025, the Office of the Comptroller of the Currency (OCC) announced that it would no longer examine national banks or federal savings associations for reputation risk and would remove references to reputation risk from its Comptroller's Handbook booklets and guidance issuances (see Legal Update, OCC Removes Reputation Risk from Bank Supervisory Examinations). On June 23, 2025, the Federal Reserve Board announced that reputational risk will no longer be a component of examination programs in its supervision of banks (see FRB: Federal Reserve Board announces that reputational risk will no longer be a component of examination programs in its supervision of banks).

New Frontiers in Technology (NFT) Act

On December 20, 2024, Representative William Timmons (R-SC) introduced the New Frontiers in Technology Act (NFT Act), which is meant to specify the treatment of covered NFTs under the securities laws and function as an extension of the FIT21 bill (see Financial Innovation and Technology of the 21st Century Act). (FIT21 has been superseded by more recent federal crypto market structure legislation, discussed above.)

The NFT Act would expressly state that:

- Covered NFTs are not investment contracts under the securities laws.
- The offer or sale of a covered NFT is not a transaction in a security.

This would effectively remove the application of the securities laws to most NFTs. The NFT Act would apply only to digital assets created for personal, family, or household consumption, including art, music, literary works, intellectual property, collectibles, merchandise, and virtual land or video game assets, so long as the NFT is not marketed by an issuer or promoter:

- Primarily as an investment opportunity.
- That promises future actions, or a series of actions designed explicitly and for increasing the value of the covered NFT.

The NFT Act would also require the US Comptroller General to analyze the specifics of NFTs and provide a report within a year of enactment.

Digital Asset Anti-Money Laundering Act of 2022

On December 14, 2022, US Senators Elizabeth Warren (D-MA) and Roger Marshall (R-KS) introduced the Digital Asset Anti-Money Laundering Act of 2022 (DAAMLA), which would authorize FinCEN to designate digital asset wallet providers, miners, validators, and other select network participants as money service businesses (MSBs). This designation would require these parties to register with FinCEN and would subject these parties to the anti-money laundering obligations of the BSA.

For more information, see Legal Update, House Committee Adds Crypto Subpanel and Non-Partisan Group Urges Senate to Pause Digital Commodities Bill After FTX Collapse.

Digital Trading Clarity Act of 2022

On September 29, 2022, US Senator Bill Hagerty (R-TN) introduced the Digital Trading Clarity Act of 2022, which addresses the determination of whether a digital asset is a security under the federal securities laws and digital asset trading venues. The Act provides that a digital asset not subject to a determination that it is a security by the SEC or a federal court and listed through an intermediary that meets certain requirements related to custody, disclosure, and other investor protections, would not be considered a security subject to the federal securities laws.

If a federal court through a final judgment, or the SEC through formal rulemaking or enforcement action, were to determine, and the CFTC does not object, that a digital asset is a security, the bill would require the SEC Division of Examinations to request information from an intermediary listing that digital asset to determine if the intermediary meets the requirements in the bill's text. If it does, the intermediary enters into a two-year "compliance period" in which the intermediary would not be subject to enforcement action for listing that digital asset or failing to register as a national securities exchange or broker-dealer in connection with that digital asset.

Virtual Currency Tax Fairness Act

On July 26, 2022, US Senator Kirsten Gillibrand (D-NY) and former US Senator Patrick Toomey (R-PA) introduced the Virtual Currency Tax Fairness Act, designed to simplify the use of digital assets for everyday purchases. The bill would exempt from taxation the use of virtual currency (VC) to purchase goods and services under $50. A press release announcing the legislation notes that:

- Under current tax law, which currently treats VC as property for tax purposes, a taxable event occurs when a digital asset is used to make a purchase.
- The legislation would provide the same exception for small personal transactions as is currently in place for foreign currency.
- The legislation includes an aggregation rule that would treat all sales or exchanges that are part of the same transaction as one sale or exchange.

The legislation had bipartisan support in the US House of Representatives, where US Representatives Suzan DelBene (D-WA) and David Schweikert (R-AZ) introduced a previous version of the legislation in February 2022. The bill has since failed to advance.

Securities Clarity Act

On July 16, 2021, US Representatives Tom Emmer (R-MN), Darren Soto (D-FL), and Ro Khanna (D-CA) introduced the Securities Clarity Act, which would clarify and codify that an asset sold under an investment contract, whether tangible or intangible (including an asset in digital form), that is not otherwise a security under the bill, does not become a security as a result of being sold or otherwise transferred under an investment contract. A press release on the proposed DCEA states that it is intended to work with the proposed Securities Clarity Act (see Digital Commodity Exchange Act of 2022).

**Information on GENIUS Act revisions contributed by Scott Diamond, Ballard Spahr LLP.*

**Certain information on FIT21 contributed by Sophia Kielar and Samidh Guha, Guha PLLC, reprinted from Thomson Reuters Institute "The future of crypto regulation: What is FIT 21?" https://www.thomsonreuters.com/en-us/posts/government/crypto-regulation-fit-21/ with permission of Thomson Reuters. Copyright © 2024. For further information on Thomson Reuters Institute, please visit https://www.thomsonreuters.com/.*