



New layer to crypto policy emerges with digital assets executive order

In what could be a watershed moment for the industry, President Biden's "Executive Order on Ensuring Responsible Development of Digital Assets" (the Order) brings digital assets to the forefront of the US federal government agenda.¹ The Order:

1. acknowledges the increasing mainstream adoption of these assets,
2. demonstrates the promise and importance of this technology in maintaining American economic and financial competitiveness, and
3. recognizes the need for a coherent policy response.

Significantly, the Order leverages the full breadth of the Executive Branch—not just the financial regulators. With the Order, the President has mandated far-reaching studies of the national security, financial stability, and climate implications of digital assets. Symbolically, the Order is an acknowledgement from the nation's highest office of the increasing importance of this asset class. As a practical matter, the Order sets in motion a series of activities at the federal level that will have both near-term and long-term implications for the industry.

Here are Deloitte's takeaways:

- **Absent legislation, this Order (and its subsequent reports) will set national policy for digital assets.** For decades, presidents have used Executive Orders as a work around for the legislative branch; they are also an efficient way to set national policy. In lieu of further Congressional action, this Order and the mandates therein will drive US policy in this space.
- **It demonstrates that the government is still in assessment mode.** The Order calls for no less than eight reports and frameworks for various components of a federal response.
- **The Order makes a US central bank digital currency (CBDC) a key tenet of Biden's digital assets policy framework.** The Order requires the Attorney General, in consultation with the Secretary of the Treasury and Chairman of the Federal Reserve, to make a recommendation as to whether legislation is necessary for development of a US CBDC within 180 days. It also orders the delivery of a legislative proposal 30 days later, which the president could then send to Congress.

¹ <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/>

- **The Order directly and indirectly encourages the financial regulators to do more within their existing mandates.** In strikingly clear language, the Order states “Digital asset issuers, exchanges and trading platforms, and intermediaries whose activities may increase risks to financial stability, should, as appropriate, be subject to and in compliance with regulatory and supervisory standards that govern traditional market infrastructures and financial firms, in line with the general principle of ‘same business, same risks, same rules.’” The president “encourages” the heads of the Securities and Exchange Commission, Commodity Futures Trading Commission, Federal Reserve Board, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency to “consider the extent to which investor and market protection measures within their respective jurisdictions may be used to address the risks of digital assets”.
- **The Order requires a “whole of government” response.** It addresses characteristics of the ecosystem that extend beyond the financial regulators’ traditional purview, like climate and geopolitical considerations, and invokes the agencies with undisputed mandates in these spaces (e.g., Environmental Protection Agency, State Department).
- **The Order lays the groundwork for a presidential push for digital assets legislation.** The Order requests assessment of regulatory gaps and/or legislative proposals in at least eight separate instances, including with respect to consumer protections, financial stability, illicit finance, and a US CBDC.

The US policy framework for digital assets remains dynamic. While the Order folds in another layer of complexity, it also offers clarity regarding the Administration’s view of the role federal policy will play in this space going forward. In a word, it is broad.

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