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Cryptocurrency: Regulatory and Legislative Policy Issues

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Cryptocurrencies are digital assets that can be held and transacted using software and across networks of disparate groups that do not require financial intermediaries, such as banks. Their key features are that they are pseudonymous, decentralized, and permissionless assets, features that are essential to creating the alternative and censorship-resistant financial system promoted by early adopters. These features may also make them instrumental in facilitating illicit activity and create challenges for regulators. Over time, cryptocurrency has grown into a multi-trillion-dollar industry, and a host of policy issues have arisen. This report discusses legislative and regulatory contexts of the cryptocurrency industry and addresses the key issues debated by Congress.

The legislative and regulatory contexts have changed somewhat over the past few years. Recent policies pursued by President Trump that diverge significantly from policies of the Biden Administration, along with personnel changes at regulatory agencies, highlight the impermanence of regulatory policy from one Administration to the next. Absent legislation, the current more favorable regulatory climate for certain cryptocurrency businesses—a reversal from the regulatory climate during the Biden Administration—could presumably be reversed again. In the legislative context, congressional reception of cryptocurrencies and the industry has also been changing, and many Members on the committees of jurisdiction have expressed interest in establishing legislation to create what they believe are necessary new authorities and a new regulatory structure.

Congress has generally approached cryptocurrency-related legislation on two tracks, separately considering a stablecoin framework and a cryptocurrency market structure framework. The 119th Congress passed the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act; P.L. 119-27), which regulates payment stablecoin issuers, in July 2025. Congress continues to debate the details of the broader companion bill addressing cryptocurrency market structure, with the House passing the Digital Asset Market Clarity Act of 2025 (CLARITY Act; H.R. 3633). At the same time, the cryptocurrency industry has gained greater acceptance and greater adoption by traditional financial institutions, allowing the industry to advocate for certain legislative and regulatory preferences. Combined, the shifting regulatory climate and the industry's growing influence have improved the industry's outlook, but have also exposed tensions between certain members of the cryptocurrency industry and some traditional financial players, such as traditional banks.

Key policy issues surrounding the cryptocurrency industry that Congress is considering and may choose to address through legislation include, foundationally, whether new authorities are required for certain market regulators, such as the Securities and Exchange Commission and the Commodity Futures Trading Commission, and what such authorities should entail. There is significant debate over who will regulate the various types of cryptocurrency activities, including issuance and secondary market trading performed on centralized platforms; how broad responsibilities may be divided among market regulators; and whether regulators will apply existing frameworks or adopt bespoke ones for the asset class and industry. Another key policy issue Congress may consider is whether to establish some taxonomy for various assets so that regulatory treatment applicable to different types of assets—such as cryptocurrency securities and non-securities—is clearer. Difficulty regulating decentralized finance, a facet of the industry that operates through software without intermediaries, is another emerging policy issue. Whether and how Congress chooses to deal with crypto and decentralized finance has consequences for other key policy issues, including how to account for potential illicit activity. Other issues addressed in the report include the role of fraud and scams, potential ethics issues introduced by the participation of President Trump or his family members in certain crypto enterprises, and greater integration with the traditional financial sector.

Contents

Introduction	1
Background	2
Crypto Regulators	3
CFTC Authority	4
SEC Authority	4
Considerations of Various Frameworks	7
Shifting Regulatory Policy and Selected Recent Regulatory Activity	11
Legislation in the 119 th Congress	14
Stakeholder Engagement.....	15
Crypto Policy Issues	17
Regulatory Considerations	17
Division of Regulatory Responsibility.....	18
Taxonomies	19
What to Do About Decentralized Finance (Defi)?	21
Illicit Financial Activity and Fraud	23
Magnitude of Illicit Finance and Fraud Risk	25
Illicit Finance and Fraud Policy Issues	26
Ethics Issues.....	28
Intersection with Traditional Finance.....	31
Concluding Observations	32

Contacts

Author Information.....	33
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Introduction

Cryptocurrencies are a type of digital assets that can be held and exchanged without an intermediary.¹ The assets can be held in pieces of software called *wallets*, exchanged across blockchains, and recorded on distributed public ledgers, in an ecosystem described as permissionless and decentralized. Users may also perform transactions on centralized platforms, such as exchanges, that function as intermediaries and operate somewhat similarly to traditional financial institutions. By permitting the purchase, sale, and exchange of digital assets, these centralized firms have allowed trading and speculation to become the dominant use of cryptocurrency (crypto)—use in payments and denomination of goods and services in crypto has been limited. This report does not cover the basics of how crypto works; for background, see CRS Report R47425, *Cryptocurrency: Selected Policy Issues*, by Paul Tierno.

The market capitalization for digital assets reached a high of \$4 trillion in October 2025.² The crypto market expands and contracts frequently and was around \$2.5 trillion in March 2026.³ This market includes various types of cryptocurrencies, including traditional ones such as Bitcoin and Ether, which make up roughly 70% of the market capitalization; stablecoins, which are digital assets that use the same technology as cryptocurrencies but hold in reserve U.S. dollars (and other relatively safe assets) and whose value, unlike that of cryptocurrencies, is intended to be stable against the U.S. dollar;⁴ and thousands of other coins, including meme coins⁵ promoted by famous, viral, and/or internet-based personalities. The market has been characterized by significant and swift rises and drops in market capitalization and has drawn significant attention, particularly following company insolvencies and exposure of major frauds.

The industry has mostly developed under a financial regulatory system the creation of which largely predates it. Until recently, a handful of various state and federal laws and rules applied to certain aspects of the industry through guidance applied by specific regulators. The legislative and regulatory context has evolved in the wake of shifts in opinion—such as greater openness toward crypto, including by regulators and traditional financial players; an emboldened crypto industry; and crypto market structure bills across multiple Congresses that have not become law. This has accentuated interest in the key policy issues, including how the industry should be regulated, and interest in the competing legislative options for certain key issues. This report describes the evolving landscape and the key policy issues debated.

¹ This report focuses on *cryptocurrencies* and distinguishes *cryptocurrencies* from the larger category of *digital assets*. *Digital assets* is a term that, by some definitions, refers to any digital representation of value that is recorded on a cryptographically secured ledger. *Cryptocurrencies* are one type of digital asset.

² See CoinGecko, “Global Cryptocurrency Market Cap Charts,” <https://www.coingecko.com/en/charts>.

³ See CoinGecko, “Global Cryptocurrency Market Cap Charts,” <https://www.coingecko.com/en/charts>.

⁴ Other stablecoins that are intended to remain stable relative to other assets also exist. The U.S. dollar stablecoin market described here is the largest stablecoin market, at over \$300 billion. Section 4 of P.L. 119-27 enumerates the permissible reserve assets for a permitted payment stablecoin issuer. For a discussion of safe assets, see Anna Gelpern, Erik F. Gerding, “Inside Safe Assets,” *Yale Journal on Regulation*, 363(2016), <https://scholar.law.colorado.edu/faculty-articles/8>.

⁵ Meme coins are a type of cryptocurrency usually based on, inspired by, and/or promoted by internet or pop cultural personalities or trends. They are marked by volatility. See Coinbase, “What is a memecoin,” <https://www.coinbase.com/learn/crypto-basics/what-is-a-memecoin>; or SEC, CFTC, “Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets,” 91 *Federal Register* 13714, March 23, 2026.

Background

A combination of state and federal regulations has been applied to various cryptocurrency activities. There is currently no overarching federal framework that regulates cryptocurrencies, how they may be issued, the market structure in which they circulate and are traded, how they relate to existing financial laws, or even what distinguishes the various classifications.

Other financial products and services, and the markets in which they are offered, are regulated by a series of laws and accompanying regulations, often adopted after major crises.⁶ Banks, for example, are regulated under the National Banking Acts, the Federal Reserve Act, and the Federal Deposit Insurance Act, among others, while securities issuance and trading are governed by the Securities Act of 1933 and the Securities Exchange Act of 1934.⁷

Cryptocurrencies did not exist when these broad pieces of landmark legislation were established. For much of cryptocurrencies' existence, various financial regulators had applied existing regulation to cryptocurrency and crypto intermediaries where they interpreted jurisdiction as granted by statute as being applicable.⁸ This was generally done through guidance and enforcement on a case-by-case basis rather than through rulemaking, meaning—in the case of enforcement actions—cryptocurrency firms may have operated in violation of rules for extended periods of time before enforcement actions were undertaken. There have been numerous instances over the past decade or so, including firm insolvencies and frauds, in which the lack of regulation has created conditions that have harmed consumers.⁹

Previously, regulation of crypto was perceived by industry advocates and some commentators as being relatively strict with minimal deference to the cryptocurrency industry. The industry was critical of the Securities and Exchange Commission's (SEC's) decision to bring enforcement actions and of the agency's refusal to write crypto-specific rules, calling it an example of “regulation by enforcement”—using punishment in lieu of providing new rules.¹⁰ In this context, the industry perceived legislation as a potentially promising alternative to an unfavorable regulatory environment. But, prior to the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act; P.L. 119-27) in 2026, no legislation was enacted. More recently, regulatory posture has become relatively less restrictive, and Members of Congress continue to debate additional legislation.

The remainder of this section provides a limited review of the authorities various market regulators rely on in the context of regulating crypto, the shifting regulatory policy landscape, a brief legislative history, and whether the less restrictive environment eases some of the industry pressure on the need for legislation.

⁶ For more on financial regulation, see CRS Report R44918, *Who Regulates Whom? An Overview of the U.S. Financial Regulatory Framework*, by Marc Labonte.

⁷ 12 U.S.C. §221 et seq., 12 U.S.C. §1811 et seq., 15 U.S.C. §77a et seq., and 15 U.S.C. §78a et seq., respectively.

⁸ For a discussion of one regulatory approach, see CRS Report R46208, *Digital Assets and SEC Regulation*, by Eva Su.

⁹ This includes, for example, the case of the exchange FTX, in which executives used consumer funds for their own investments.

¹⁰ Coinbase, “Just the Facts: A Regulation by Enforcement Only Approach Is Hurting American Leadership, Jobs, and Innovation,” September 11, 2023, <https://www.coinbase.com/blog/just-the-facts-a-regulation-by-enforcement-only-approach-is-hurting-american>.

Crypto Regulators

Crypto developers, individuals, or companies may seek to raise capital (in the form of *fiat money*—government-issued currency—or some other crypto) to fund the development of a blockchain or related software by selling tokens that could be used on the developed blockchains.¹¹ Depending on the sequencing, cryptocurrencies are then usually offered for trade on secondary markets, such as cryptocurrency exchanges.¹² The activities of these different actors and specific characteristics of the instruments being created and traded could each be subject to different regulatory authorities of various agencies.

While some features are common among many cryptocurrencies, there may also be considerable variation among the asset class. Congress could decide that crypto is its own asset class subject to bespoke regulation or that it fits within the definition of traditional asset classes. Absent congressional action, regulators could decide whether crypto meets the definition of a traditional asset class. Depending on certain digital asset attributes and criteria used, a cryptocurrency may meet the definition of a security, a commodity, or something else.¹³ These attributes and the subsequent classification of a digital asset may dictate a specific regulatory treatment and may also lead to questions such as whether existent statutory authority is adequate or whether new authority is required.

For the past decade or so, there has been an ongoing debate in Congress and among other policy professionals over the best way to regulate cryptocurrencies, including whether new and overarching crypto-specific federal legislative and regulatory frameworks are required. Policymakers have cited the lack of an overarching federal regulatory framework and a putative gap in spot market authority as motivation for a new legislative framework. Some stakeholders argue that existing laws’ and rules’ applicability to crypto is not clear, and others assert that the laws could accommodate and be applied to the technology.¹⁴ These debates persist, including those surrounding what set of factors distinguish digital securities from non-securities and around whether the SEC or the Commodity Futures Trading Commission (CFTC) should take the primary role when regulating non-security cryptocurrencies. The sections below provide a policy analysis of these stances based on a review of existing authorities, and a review of the existing regulatory framework in a crypto context.

¹¹ Securities and Exchange Commission (SEC), *Investor Bulletin: Initial Coin Offerings*, July 25, 2017, <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins-16>.

¹² Bitcoin, the first cryptocurrency, was not the subject of a presale or an initial sale.

¹³ For example, see *CFTC v. McDonnell*, 287 F. Supp. 3d 213, 216 (E.D.N.Y. 2018). “Virtual currencies can be regulated by CFTC as a commodity ... They fall well within the common definition of ‘commodity’ as well as the CEA’s definition of ‘commodities’ as ‘all other goods and articles ... in which contracts for future delivery are presently or in the future dealt in.’ Title 7 U.S.C. § 1(a)(9)”; and SEC, Plaintiff, against Ripple Labs, Inc., Bradley Garlinghouse, and Christina A. Larsen, Defendants, 20 Civ. 10832, p. 2 (United States District Court Southern District of New York 2020), <https://www.nysd.uscourts.gov/sites/default/files/2023-07/SEC%20vs%20Ripple%2013-23.pdf>.

¹⁴ See, for example, *Coinbase, Inc. v. Securities and Exchange Commission*, No. 23-3202 26 (U.S. Court of Appeals for the Third Circuit 2024): “By refusing to engage in rulemaking, the agency is evading its responsibility to articulate clearly its new position on its authority over the digital asset industry and to explain the legal basis for that revisionist view.” See also SEC, *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, Release No. 81207, July 25, 2017, p. 2, <https://www.sec.gov/files/litigation/investreport/34-81207.pdf>: “This Report reiterates these fundamental principles of the U.S. federal securities laws and describes their applicability to a new paradigm—virtual organizations or capital raising entities that use distributed ledger or blockchain technology to facilitate capital raising and/or investment and the related offer and sale of securities. The automation of certain functions through this technology, ‘smart contracts,’ or computer code, does not remove conduct from the purview of the U.S. federal securities laws.”

CFTC Authority

The argument that virtual currencies may be considered commodities and therefore may fall under the jurisdiction of the CFTC is based on an interpretation of one component of the definition of the term *commodity* in the Commodity Exchange Act (CEA).¹⁵ The CEA, which regulates derivatives of commodities in the United States, defines a *commodity* as, in part, “wheat, cotton, rice, corn”; a host of other agricultural products; and “all other goods and articles ... and all services, rights, and interests ... in which contracts for future delivery are presently or in the future dealt in.”¹⁶ Because there are or may be futures markets for cryptocurrencies, cryptocurrencies may be considered commodities under this law.

The CFTC has argued and federal courts have held that some cryptocurrencies fall within the definition of *commodity* as provided by the CEA.¹⁷ Specifically, in a September 2015 enforcement action, the CFTC noted that the definition of commodity is “broad” and argued that Bitcoin and other virtual currencies are commodities, pointing to the section of the CEA defining commodities as anything on which futures contracts could be offered.¹⁸ In a 2018 case, a federal district court agreed with the CFTC’s interpretation, ruling that the CEA’s definition of the term *commodity* encompasses virtual currency.¹⁹ The CEA permits the CFTC to regulate futures and derivatives markets based on such commodities, but authorities in spot markets are limited to anti-fraud and anti-manipulation jurisdiction.²⁰

SEC Authority

The SEC has both enforcement authority and rulemaking authority over cryptocurrencies that are securities—including disclosure requirements—unless they are subject to some exemption.²¹ Regulatory agencies and commentators have tended to disagree over which group of cryptocurrencies are considered securities and what attributes should lead to that categorization. More recently, the SEC issued guidance that took a narrower view of which cryptocurrencies may be securities. The SEC has regulatory authority over digital or tokenized securities and in instances when a cryptocurrency “becomes subject to an investment contract.”²²

¹⁵ 7 U.S.C. §1 et seq.

¹⁶ 7 U.S.C. §1a(9). The definition includes notable exceptions that include onions and motion picture box office receipts.

¹⁷ See Commodity Futures Trading Commission (CFTC), “Retail Commodity Transactions Involving Certain Digital Assets,” 85 *Federal Register* 37734, June 24, 2020, <https://www.federalregister.gov/documents/2020/06/24/2020-11827/retail-commodity-transactions-involving-certain-digital-assets>.

¹⁸ CFTC Order Coinflip, Inc. d/b/a Derivabit, et al., Respondents, No. 15-29 (CFTC September 17, 2015), <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrenforcementactions/documents/legalpleading/enfcoinfliporder09172015.pdf>, *United States of America Before the Commodity Futures Trading Commission* (CFTC Docket No.15-29).

¹⁹ CFTC v. McDonnell, 287 F. Supp. 3d 213, 216 (E.D.N.Y. 2018). “Virtual currencies can be regulated by CFTC as a commodity ... They fall well within the common definition of ‘commodity’ as well as the CEA’s definition of ‘commodities’ as ‘all other goods and articles ... in which contracts for future delivery are presently or in the future dealt in.’ Title 7 U.S.C. § 1(a)(9).”

²⁰ 7 U.S.C. §9(1).

²¹ Financial Stability Oversight Council (FSOC), *Report on Digital Asset Financial Stability Risks and Regulation*, October 3, 2022, pp. 86-87, <https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf#page=89>.

²² SEC, CFTC, “Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets,” 91 *Federal Register* 13714, March 23, 2026.

Previously, whether a cryptocurrency was considered a security was based on an evaluation of the facts and circumstances of individual cases.²³ Various sections of the securities laws define the term “security.” Definitions across securities laws are substantially similar and define a security as a “note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness,” among others, including an “investment contract.”²⁴ Commenters and regulators have observed that whether an instrument is considered an “investment contract” (one category of “security”) is based on a judicial test (the *Howey* test) consisting of various conditions.²⁵ A “contract, transaction or scheme” is an “investment contract” under the *Howey* test—and thus a “security”—if it satisfies each of the prongs of a four-pronged test: (1) the investment of money (2) in a common enterprise (3) with a reasonable expectation of profits (4) whose expectation of profits is based on the entrepreneurial or managerial efforts of others.²⁶ According to observers, cryptocurrencies that are not intended to be securities may be captured by the term “investment contract” when they meet the four prongs of that test.²⁷

Since cryptocurrencies were first created, the SEC published various reports, and various SEC officials have made comments discussing how securities laws and the *Howey* test could be applied to crypto.²⁸ Previously, the SEC has determined whether a cryptocurrency is an investment contract—and therefore a security—under securities laws on a case-by-case basis, based on the facts and circumstances of particular cases.²⁹ Under previous leadership, the SEC also noted that courts had not found the *Howey* test “unworkable”—implying that the framework could be applied to crypto—and encouraged crypto issuers and trading platforms to register with the agency.³⁰

These regulatory interpretations have been amended in another interpretive guidance (see “Shifting Regulatory Policy and Selected Recent Regulatory Activity”). In March 2026, the SEC and CFTC issued guidance regarding the two agencies’ consideration of various types of digital assets.³¹ Broadly, the guidance provides an interpretation regarding the application of federal securities laws and judicial tests to certain types of crypto assets.³² (For a legal analysis of the guidance, see CRS Legal Sidebar LSB11415, *SEC Issues Crypto Guidance as Congress Considers Market-Structure Legislation*, by Jay B. Sykes.) First, it classifies various types of

²³ SEC, “Statement on the Denial of a Rulemaking Petition Submitted on Behalf of Coinbase Global, Inc.,” press release, December 15, 2023, <https://www.sec.gov/newsroom/speeches-statements/gensler-coinbase-petition-121523>.

²⁴ 15 U.S.C. §77b(a)(1).

²⁵ Annette L. Nazareth and Zachary J. Zweihorn, “Digital and Digitized Assets: Federal and State Jurisdictional Issues,” American Bar Association Derivatives and Futures Law Committee Innovative Digital Products and Processes Subcommittee Jurisdiction Working Group, December 25, 2020, p. 116 (discussing application of the test set forth in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946) to digital assets).

²⁶ Nazareth and Zweihorn, “Digital and Digitized Assets: Federal and State Jurisdictional Issues,” p. 116.

²⁷ Nazareth and Zweihorn, “Digital and Digitized Assets: Federal and State Jurisdictional Issues,” pp. 115-116.

²⁸ See, for example, SEC, *Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO*, July 25, 2017, <https://www.sec.gov/files/litigation/investreport/34-81207.pdf>; and SEC Division of Corporate Finance, *Framework for “Investment Contract” Analysis of Digital Assets*, April 3, 2019, <https://www.sec.gov/files/dlt-framework.pdf>.

²⁹ SEC Division of Corporate Finance, *Framework for “Investment Contract” Analysis of Digital Assets*.

³⁰ See SEC, “What Are Crypto Trading Platforms? Office Hours with Gary Gensler,” July 28, 2022, <https://www.youtube.com/watch?v=aW155tTZ50Q>; and Gary Gensler, “Testimony Before the House Financial Services Committee,” SEC, October 5, 2021, <https://www.sec.gov/newsroom/speeches-statements/gensler-2021-10-05>.

³¹ SEC, CFTC, “Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets,” 91 *Federal Register* 13714, March 23, 2026, <https://www.govinfo.gov/content/pkg/FR-2026-03-23/pdf/2026-05635.pdf>.

³² The guidance specifically addresses the *Howey* test for evaluating investment contracts.

crypto assets—digital commodities, collectibles, digital tools, stablecoins, and digital securities—providing a description of the assets’ attributes and whether they qualify as securities. Of the listed assets, only digital—or tokenized—securities qualify as securities.

The guidance goes on to explain that a non-security asset “becomes subject to an investment contract,” a type of security, by “inducing an investment of money in a common enterprise with representations or promises to undertake essential managerial efforts from which a purchaser would reasonably expect to derive profits.”³³ Such assets subject to an investment contract must either register under securities laws or claim a relevant exemption. This assertion that digital assets sold under certain assumptions “become subject to” securities laws updates previous guidance (and officials’ statements) that appeared more declarative in nature in asserting that digital assets could themselves be investment contracts.³⁴ A non-security crypto-asset does not necessarily remain “subject to” an investment contract in perpetuity. Rather, according to the guidance, such an asset “separates from” an investment contract when purchasers “could no longer reasonably expect the issuer’s representations or promises to engage in essential managerial efforts to remain connected to” the asset. This may occur when the issuer has “fulfilled its representations” to engage in essential managerial efforts, when the issuer publicly announces it will not complete promised managerial efforts, or when it becomes clear that the issuer will not complete such efforts. Separately, the guidance also established an interpretation that mining and staking activities—operations that validate transactions on blockchains—conducted in compliance with certain conditions are not securities offerings or sales and that those engaging in such activities need not register with the SEC.³⁵ The SEC had previously alleged that certain staking programs were investment contracts.³⁶

Other Regulators

Policy discussions and legislation currently center on the roles of the SEC and CFTC in regulating various crypto sector activities. Yet a handful of other regulatory agencies currently have some authority over the industry. For example, many crypto firms must register with the Financial Crimes Enforcement Network, an agency at the Treasury Department that administers the Bank Secrecy Act, the series of laws that target money laundering and other illicit finance. (See “Illicit Financial Activity and Fraud.”) Firms are also currently required to register with state regulators in most jurisdictions. Also, since the passage of the GENIUS Act in July 2025, federal and state banking regulators have a key role in regulating stablecoin issuers. The Consumer Financial Protection Bureau (CFPB) and the Federal Trade Commission (FTC) may have enforcement authorities in certain circumstances related to fraud and deception.

³³ SEC, CFTC, “Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets.”

³⁴ See, for example, SEC Division of Corporate Finance, *Framework for “Investment Contract” Analysis of Digital Assets*: “A threshold issue is whether the digital asset is a ‘security’ under those laws” (p. 1); and “In this guidance, we provide a framework for analyzing whether a digital asset is an investment contract and whether offers and sales of a digital asset are securities transactions. As noted above, under the Howey test, an ‘investment contract’ exists when there is the investment of money in a common enterprise with a reasonable expectation of profits to be derived from the efforts of others. Whether a particular digital asset at the time of its offer or sale satisfies the Howey test depends on the specific facts and circumstances” (p. 2). See also SEC, CFTC, “Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets”: “A non-security crypto asset becomes subject to an investment contract when an issuer offers it by inducing an investment of money in a common enterprise with representations or promises to undertake essential managerial efforts from which a purchaser would reasonably expect to derive profits.”

³⁵ SEC Division of Corporate Finance, *Framework for “Investment Contract” Analysis of Digital Assets*, p. 35.

³⁶ Caroline A. Crenshaw, “Response to Staff Statement on Protocol Staking Activities: Stake It till You Make It?,” SEC, May 29, 2025, <https://www.sec.gov/newsroom/speeches-statements/crenshaw-statement-protocol-staking-052925>.

Considerations of Various Frameworks

Whether a cryptocurrency is a security or commodity has ramifications for how it is regulated. This section provides a cursory overview of the differences among regulatory frameworks. For more on securities regulatory frameworks, see CRS Report R48521, *Capital Markets and Securities Regulation: Overview and Policy Issues*, by Eva Su; for more on derivatives regulation, see CRS Report R48451, *Introduction to Derivatives and the Commodity Futures Trading Commission*, by Rena S. Miller.

Disclosure Requirements

A primary focus of the securities framework is disclosure, which is meant to ensure that investors receive financial and other relevant information prior to securities being offered for public sale, and to prohibit “deceit, misrepresentations, and other fraud in the sale of securities.”³⁷ Companies that issue securities to the public for sale, through an initial public offering, must first disclose relevant information in a registration statement and prospectus.³⁸ The registration statement must include information such as a description of the company’s properties or business; a description of the security being sold; information about the company’s management; and independently verified financial statements.³⁹

There is less of a focus on disclosure in the commodities and derivatives trading regulatory framework in part because commodities on which derivatives are based are relatively simple and homogenous/substitutable and do not have an issuer.⁴⁰

The disclosure requirement stems at least in part from the principal-agent issue—the theory that interests of principals (stockholders) and managers of a stock-issuing company may diverge and conflicts of interest may arise.⁴¹ (Certain securities laws regulate private offerings to a limited number of qualified investors and govern the resale of restricted securities.⁴²) Benefits of applying this approach to digital assets include ensuring that investors have access to information necessary to make an informed decision prior to investing. Drawbacks of this application toward decentralized assets may include confusion regarding who is responsible for the disclosures, which may lead to a lack of compliance. Cryptocurrencies are built using relatively complex technologies whose use cases remain arguably uncertain. Therefore, even in instances where companies submit disclosures, the disclosures may not be accessible to the intended recipients or the disclosures may create the impression that the technologies have achieved certain practical uses when they have not done so. There are also rules that limit certain types of investments to

³⁷ SEC, “The Laws That Govern the Securities Industry,” accessed January 15, 2026, <https://www.investor.gov/introduction-investing/investing-basics/role-sec/laws-govern-securities-industry>.

³⁸ For more on securities laws and regulation, see CRS Report R48521, *Capital Markets and Securities Regulation: Overview and Policy Issues*, by Eva Su.

³⁹ 15 U.S.C. §77e; SEC, “Registration Under the Securities Act of 1933,” accessed January 15, 2026, <https://www.investor.gov/introduction-investing/investing-basics/glossary/registration-under-securities-act-1933>.

⁴⁰ While there are certain disclosure requirements of futures commission merchants, such as 30 C.F.R. §30.6, the disclosures address risks “inherent in futures trading and ask the customer to consider carefully whether it is in a financial position to take such risks.” See CFTC, “Futures Commission Merchants (FCMs): Disclosure,” accessed on October 29, 2025, <https://www.cftc.gov/IndustryOversight/Intermediaries/FCMs/fcmibdisclosures.html>.

⁴¹ Michael C. Jensen and William H. Meckling, “Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,” *Journal of Financial Economics*, vol. 3, no. 4 (July 1976), p. 308, [https://josephmahoney.web.illinois.edu/BA549_Fall%202012/Session%205/5_Jensen_Meckling%20\(1976\).pdf](https://josephmahoney.web.illinois.edu/BA549_Fall%202012/Session%205/5_Jensen_Meckling%20(1976).pdf).

⁴² CRS Report R45221, *Capital Markets: Public and Private Securities Offerings*, by Eva Su.

accredited investors, or place limits on how much nonaccredited investors can invest in certain offerings, which balance investor protection with permitting access.⁴³

Registration Requirements

In addition to the disclosure requirements, the Securities Exchange Act of 1934 requires that various intermediaries—which facilitate the trading of securities—register with and be subject to the supervision of the SEC. This supervisory authority applies to large, sophisticated broker-dealers that cater to institutional clients, as well as those that provide services to small retail clients (such as online brokers). The securities laws and associated regulations include prohibitions against market manipulation and fraud⁴⁴ and rules governing conflicts of interest.⁴⁵

The primary objective of the CFTC is to “promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation.”⁴⁶ According to one law firm, the CFTC’s regulation relies on various forms of intermediation, including through registration requirements, segregated accounts, and oversight by the CFTC and self-regulatory organizations.⁴⁷

Currently, certain companies in the crypto industry are required to register with state regulators and the Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) for relatively narrow compliance with the Bank Secrecy Act (BSA) and anti-money-laundering (AML) laws. Firms that facilitate trade in crypto futures are currently required to register with the CFTC. However, intermediaries such as exchanges, which play a large role in the industry for spot market transactions, are not currently required to register with either the CFTC or the SEC for the trade of non-security cryptocurrencies in spot markets. The various pieces of legislation discussed in this report and being debated by Congress would establish registration and other requirements, similar to those of SEC- and CFTC-registrants of intermediaries for their involvement in spot crypto transactions. Benefits to requiring that crypto firms register with the SEC or CFTC include ensuring that regulators have the opportunity to approve all firms, the types of transactions they offer, and assets for sale before firms begin operations. Registration also ensures that regulators have a current inventory of such so they can perform or delegate supervisory tasks.

Spot Market Authority

Digital assets that are classified as *commodities* fall under the CEA (7 U.S.C. §1 et seq.) and are subject to the jurisdiction of the CFTC, which generally extends to commodities and derivatives (contracts that derive their value from an underlying commodity).⁴⁸ However, the CFTC’s authority over markets where such assets are bought and sold for cash (called “spot” markets) is generally limited to anti-fraud and anti-manipulation authorities.⁴⁹ (For example, an investor

⁴³ CRS Report R45221, *Capital Markets: Public and Private Securities Offerings*, by Eva Su.

⁴⁴ 15 U.S.C. §77q.

⁴⁵ 17 C.F.R. §240.151-1, Regulation best interest.

⁴⁶ CFTC, “The Commission,” accessed October 28, 2025, <https://www.cftc.gov/About/AboutTheCommission>.

⁴⁷ Michael L. Spafford et al., “What You Should Know About the CFTC, Part 1: The Regulatory Basics,” Paul Hastings, September 24, 2025, <https://www.paulhastings.com/insights/derivatives-download/what-you-should-know-about-the-cftc-part-1-the-regulatory-basics>.

⁴⁸ For more on commodities and derivatives, see CRS Report R48451, *Introduction to Derivatives and the Commodity Futures Trading Commission*, by Rena S. Miller.

⁴⁹ FSO, *Report on Digital Asset Financial Stability Risks and Regulation*, October 3, 2022, pp. 113-114, <https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf>; and CFTC, “Retail Commodity (continued...)”

using their own money to buy cryptocurrency on a cryptocurrency exchange and claiming ownership immediately is an example of spot market activity.) In a 2022 report, the Financial Stability Oversight Council (FSOC)—a systemic risk oversight body—described a “regulatory gap ... in spot markets for crypto-assets that are commodities and not securities.”⁵⁰ As a result, the FSOC report stated that “[s]ignificant market integrity investor protection issues may persist because of the limited direct federal oversight of these spot markets.”⁵¹ The report encouraged Congress to pass legislation that provides regulatory authority for federal financial regulators over the spot market for digital assets that are not securities.⁵² Various policymakers and legislators have used the described gap as motivation for certain crypto legislative proposals.⁵³

The lack of a spot market authority and the perceived gap raise some questions. First, are all cryptocurrencies that are not securities commodities? And should they be considered commodities for regulatory purposes? If one assumes that such assets are digital commodities for regulatory and other purposes, is it reasonable to consider the lack of spot market authority a gap? The CFTC’s authorities in other (traditional) commodities’ markets—including those on which derivatives markets are based—are similarly limited to anti-fraud and anti-manipulation.⁵⁴ Suggesting that spot market authority is required for digital commodities (or non-securities cryptocurrencies) also, to some extent, implies that cryptocurrencies and the nature of their trading/exchange also differ substantially from traditional commodities. Then there is a question of whether the CFTC, which is not responsible for performing broad spot market supervision of non-crypto retail commodities markets either (outside of fraud and manipulation)—but rather mostly monitors sophisticated financial firms—can police the retail spot markets of cryptocurrencies.

Conflicts of Interest

As referenced above, both securities and commodities and derivatives laws and regulations have certain rules against conflicts of interest. As a result of these and other rules, diverse market activities are usually performed by different intermediaries. Requiring a similar diversification of function to the cryptocurrency industry would represent a shift in current industry practice. Crypto exchanges are integral to intermediated crypto transactions—one of the primary avenues that consumers use to access crypto. In this role, cryptocurrency exchanges have evolved to perform a variety of functions; most cryptocurrency exchanges currently operate simultaneously as (1) exchanges, providing a platform on which their customers can buy and sell cryptocurrencies; (2) broker-dealers, in which role they are themselves the buyers or sellers; and (3) custodians, providing custody services for their customers. Moreover, some exchanges have

Transactions Involving Virtual Currency,” 82 *Federal Register* 243, December 20, 2017, <https://www.govinfo.gov/content/pkg/FR-2017-12-20/pdf/2017-27421.pdf>.

⁵⁰ FSOC, *Report on Digital Asset Financial Stability Risks and Regulation*, p. 88.

⁵¹ FSOC, *Report on Digital Asset Financial Stability Risks and Regulation*, p. 114.

⁵² FSOC, *Report on Digital Asset Financial Stability Risks and Regulation*, p. 117.

⁵³ See, for example, Statement of Rostin Behnam, Georgetown University, in U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Digital Assets, *Exploring Bipartisan Legislative Frameworks for Digital Asset Market Structure*, 119th Cong. 1st sess., June 24, 2025, p. 1, https://www.banking.senate.gov/imo/media/doc/behnam_testimony.pdf; and Rep. French Hill and Rep. G.T. Thompson, “Ending the Era of Uncertainty: Congress Delivers for Crypto,” *The Hill*, July 14, 2025, <https://thehill.com/opinion/finance/5398808-trump-us-lead-digital-assets/>. For a review of a framework under the Biden Administration that “aim[ed] to bring clarity through legal precedent,” see Akshay S. Ralhi, “Beyond Enforcement: The SEC’s Shifting Playbook on Crypto Regulation,” Georgetown Law Center on Transnational Business and the Law, May 9, 2025, <https://www.law.georgetown.edu/ctbl/blog/beyond-enforcement-the-secs-shifting-playbook-on-crypto-regulation/>.

⁵⁴ 7 U.S.C. §9.

historically been partners in issuing stablecoins, which may then be traded on exchanges but many of which cannot be directly redeemed.⁵⁵

This business model introduces some benefits, including reduced costs, customer accessibility, and a better user experience. Customers who want to access cryptocurrencies but do not want to use unhosted wallets and private keys can hold their assets through these centralized exchanges that tend to have more user-friendly interfaces. This business model may also introduce certain risks. First, the centralization of functions may introduce conflicts of interests for investors. Platforms that can control how and when an investor trades hold considerable leverage over investors, especially when the investor-platform incentives are not aligned. The model may also lead to questions of whether a trading venue is governed by the same rules that apply to other customers of an exchange or whether the trading venue enjoys certain privileges. Custodial activities performed by exchanges that are not subject to explicit requirements can also create investor protection issues.

Legislation being considered by Congress would prohibit an exchange or affiliate from acting as a counterparty, with certain exceptions, a provision that aims to prevent conflicts of interest. Those exceptions include allowing the exchange to perform the function if entered into “at the direction of” unaffiliated customers or if related to the “operational needs of the business of the digital commodity exchange or its affiliate.”⁵⁶ Yet it is conceivable that either—but especially the latter—exception could be interpreted broadly to permit unwanted activity.

Uniform vs. Differentiated Regulation

There is diversity within the broad array of digital assets that argues against regulating all assets in the same way, whether as commodities or securities. For example, Bitcoin is a cryptocurrency that has only ever been and can only be created through *mining* blockchain-based activities performed by unaffiliated individuals or companies via the proof of work consensus mechanism. Bitcoin and other cryptocurrencies are believed to be or to have become decentralized, which means they are considered outside the control of any individual or group of individuals under common control.⁵⁷ As such, these and similarly designed finite assets that must be extracted through a labor- or resource-intensive process draw comparisons to gold or other commodity mining. Such logic suggests that these assets be treated like gold and other commodities.⁵⁸

Alternatively, developers may market a cryptocurrency and individuals may invest in a project based on the belief that the blockchain and the services the blockchain may offer in the future will cause the underlying cryptocurrency to appreciate, much like stocks or other securities. To the extent that cryptocurrency purchasers may rely on ongoing managerial or entrepreneurial efforts of some individual or group to perform these services, the cryptocurrencies may resemble a stock. In fact, there may be certain consensus mechanisms that allow for a greater level of centralization and may provide developers a greater level of control. Various cryptocurrencies have also previously been used to offer other financial or monetary benefits, including in the form of discounts on exchanges through “burns,” or removal from circulation that limits supply and may

⁵⁵ Coinbase, “Coinbase and Circle Announce the Launch of USDC—a Digital Dollar,” press release, October 23, 2018, <https://www.coinbase.com/blog/coinbase-and-circle-announce-the-launch-of-usdc-a-digital-dollar>.

⁵⁶ H.R. 3633 §404 (which would add new sections, §5i(b)(2)B)(i) and (iii), to the Commodity Exchange Act [CEA]).

⁵⁷ See CRS Report R47425, *Cryptocurrency: Selected Policy Issues*, by Paul Tierno.

⁵⁸ See Coinbase, “How Do Cryptocurrency Miners Work?,” press release, <https://www.coinbase.com/learn/crypto-basics/how-do-cryptocurrency-miners-work>; and Nathan Crooks, “How Is Bitcoin Similar to Gold?,” *The Block*, August 25, 2023, <https://www.theblock.co/learn/245718/how-is-bitcoin-similar-to-gold>.

fuel appreciation.⁵⁹ These attributes support arguments that certain types of cryptocurrency be regulated by the SEC.

Current Regulatory Agency Size and Resources

In addition, agencies' staff or funding constraints may play a role in their respective ability to perform supervisory activity. As of September 2025, the CFTC had approximately 561 employees and a budget of approximately \$399 million.⁶⁰ By contrast, the SEC employs more than 4,000 and has a budget of more than \$2 billion.⁶¹ Adding supervision of cryptocurrency markets to the purview of either regulator would likely require additional congressional appropriations to whichever agency were to be chosen. In addition, the CFTC-supervised derivatives market is predominantly composed of large, sophisticated financial companies, whereas there is a relatively large retail investor contingent among securities market participants. The SEC's experience with a large retail contingent may make it more capable of the supervisory responsibility.

Shifting Regulatory Policy and Selected Recent Regulatory Activity

In the absence of an overarching statutory framework, crypto industry oversight has fallen to the judgment of federal financial regulators as to whether their existing authority can and should be applied to crypto. As such, and due to the potential for varying interpretations from one Administration to the next, crypto regulation at any given time is subject, to some extent, to the prevailing ideology of the heads of regulatory agencies, who have been selected by the President and confirmed by the Senate. In addition, Presidents may issue executive orders that lay out their goals for the sector, and these executive orders may be rescinded by subsequent Administrations.

A few recent examples illustrate the shift in regulatory ideology and priorities. Regulators during the Biden Administration took a number of actions to apply new regulatory requirements to the crypto industry. For example, in June 2023, the SEC sued Coinbase, a large cryptocurrency exchange headquartered in the United States, for operating as an unregistered securities exchange, broker, and clearing agency.⁶² In addition, the Biden Administration SEC released Staff Accounting Bulletin (SAB) 121, which required institutions providing custody services to account for crypto by recognizing assets and liabilities on custodians' balance sheets.⁶³ This was interpreted by financial institutions and certain regulators as being a shift from traditional

⁵⁹ According to Binance, the BNB coin, which it developed, provided for discounts on the Binance centralized exchange. See Binance, "Binance and BNB Chain: What's the Difference?," *Binance Blog*, October 21, 2022, <https://www.binance.com/en/square/post/43657>. In addition, the now defunct exchange FTX had previously committed to buying back and burning quantities of FTT, a token it had created. See FTX, "FTX Token Whitepaper," 2020, <https://whitepaper.io/document/502/ftx-token-whitepaper>.

⁶⁰ Jeffrey Sutton, "CFTC Plan for Lapse in Appropriations," CFTC memorandum, September 29, 2025, p. 2, <https://www.cftc.gov/media/12736/CFTCLapsePlan092925/download>; and letter from Rostin Behnam, Chairman, CFTC, to Sen. Patty Murray et al., in *CFTC Submission for President's Budget Fiscal Year 2025*, March 11, 2024, https://www.cftc.gov/sites/default/files/CFTC%20FY%202025%20President's%20Budget_Final_for%20Posting.pdf.

⁶¹ SEC, "Full-Time Equivalents History," June 9, 2025, <https://www.sec.gov/foia-services/frequently-requested-documents/full-time-equivalents-history>. SEC, *Fiscal Year 2026 Congressional Budget Justification Annual Performance Plan / Fiscal Year 2024 Annual Performance Report*, <https://www.sec.gov/files/fy-2026-congressional-budget-justification.pdf>.

⁶² Securities and Exchange Commission v. Coinbase, Inc. and Coinbase Global, Inc., No. 1:23-cv-0473 (S.D.N.Y. June 6, 2023).

⁶³ SEC, "Staff Accounting Bulletin No. 121," March 21, 2022, <https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-121>.

custodial practices and limiting bank participation in the practice of providing custodial services for crypto.⁶⁴

An example from the Office of the Comptroller of the Currency (OCC), a banking regulator, is also illustrative. The OCC issued a series of policy letters in 2020 and early 2021, under the first Trump Administration, in which it had found various crypto-related activities legally permissible. In November 2021, under the Biden Administration, the OCC issued a new policy letter that required banks to notify their supervisor of the intention to undertake any of those activities and not to engage in those activities until they had received a written “non-objection” from the supervisor.⁶⁵ In addition, other federal banking regulators issued guidance establishing non-objection requirements and issued joint statements warning of various crypto-related risks.⁶⁶

The SEC and OCC actions under the Biden Administration demonstrate one ideological stance toward the industry: that existing rules should be rigorously applied to crypto as applied to traditional financial activities. Various regulators under the Biden Administration prioritized preauthorization of activity and risk mitigation.

Regulatory policy at the agencies has undergone a shift since the beginning of the second Trump Administration; these agencies have adopted a less restrictive regulatory application, with regulators dismissing court cases and enforcement actions and repealing guidance. For example, in February 2025, the SEC dismissed its enforcement action against Coinbase, stating that it was “time for the Commission to rectify its approach and develop crypto policy in a more transparent manner.”⁶⁷ The SEC also issued SAB 122, which rescinded SAB 121’s restrictive accounting treatment of banks providing custody services for cryptocurrency firms.⁶⁸ Regarding banking regulation, the OCC issued new Interpretive Letter 1183, which brought the agency back to its pre-2021 position, stating that it “intended to reduce burden, encourage responsible innovation, and enhance transparency ... and also ensure that bank activities will be treated consistently, regardless of the underlying technology.”⁶⁹ In April 2025, the Federal Reserve rescinded its August 2022 guidance recommending that supervised banks notify their points of contact at the

⁶⁴ Letter from Bank Policy Institute et al. to Gary Gensler, Chairman, SEC, February 14, 2024, <https://www.aba.com/-/media/documents/letters-to-congress-and-regulators/jointclsec20240214.pdf>; and Claire Williams, “Bank Regulators Say SEC Rule May Undermine Custody Banking,” *American Banker*, February 5, 2024, <https://www.americanbanker.com/news/bank-regulators-say-sec-rule-may-undermine-custody-banking>.

⁶⁵ See OCC, Interpretive Letters 1170, 1172, and 1174, <https://www.occ.treas.gov/topics/laws-and-regulations/interpretations-and-precedents/summary-of-interpretive-letter-1179-requests.html>; and OCC, “Chief Counsel’s Interpretation Clarifying: (1) Authority of a Bank to Engage in Certain Cryptocurrency Activities; and (2) Authority of the OCC to Charter a National Trust Bank,” Interpretive Letter no. 1179, November 18, 2021, <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2021/int1179.pdf>. Regarding the previous relatively favorable view, the OCC issued an advance notice of proposed rulemaking to ensure that it fosters a “regulatory and supervisory framework that enables banks to adapt to rapidly changing trends and technology developments in the financial marketplace.” It included questions on whether there were barriers to bank involvement in crypto activities and whether guidance was needed for clarification on crypto and blockchain technology. No further regulatory action has been taken to date. OCC, “National Bank and Federal Savings Association Digital Activities: Advance Notice of Proposed Rulemaking,” June 4, 2020, <https://occ.gov/news-issuances/bulletins/2020/bulletin-2020-59.html>.

⁶⁶ See, for example, Federal Reserve, “Engagement in Crypto-Asset-Related Activities by Federal Reserve-Supervised Banking Organizations,” SR 22-6, August 16, 2022, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20250424a3.pdf>.

⁶⁷ SEC, “SEC Announces Dismissal of Civil Enforcement Action Against Coinbase,” press release, February 27, 2025, <https://www.sec.gov/newsroom/press-releases/2025-47>.

⁶⁸ SEC, “Staff Accounting Bulletin 122,” January 23, 2025, <https://www.sec.gov/rules-regulations/staff-guidance/staff-accounting-bulletins/staff-accounting-bulletin-122>.

⁶⁹ OCC, “OCC Letter Addressing Certain Crypto-Asset Activities,” Interpretive Letter 1183, March 7, 2025.

Federal Reserve before engaging in crypto activity.⁷⁰ Also in April 2025, federal banking regulators withdrew supervisory letters from 2023 that described “crypto-asset risks” to banks and liquidity risks resulting from crypto asset vulnerabilities.⁷¹

Besides the specific supervisory actions taken by regulators, various regulators and agencies have taken other actions that signal support for the industry. In general, the regulatory agencies have engaged with the crypto community through roundtables and “crypto sprints” and appeared willing to consider rules they had not previously undertaken. In January 2025, for example, the SEC announced it had created a Crypto Task Force “dedicated to developing a comprehensive and clear regulatory framework for crypto assets,” reversing the previous leadership’s apparent preference for applying existing rules that were not crypto-specific.⁷² In that vein, in July 2025, the SEC announced Project Crypto, “a Commission-wide initiative to modernize the securities rules” and establish “a regulatory framework for distributions of crypto assets in America” as swiftly as possible and in line with a July 2025 President’s Working Group (PWG) report on digital assets.⁷³ (The President’s Working Group on Digital Asset Markets was established in conjunction with the creation of a report required by Executive Order [E.O.] 14178, “Strengthening American Leadership in Digital Financial Technology.”⁷⁴) As part of Project Crypto, the SEC and CFTC stated that they would collaborate on the project together and held a harmonization meeting in January 2026.⁷⁵

Also referencing the PWG and citing an authority first granted in 2013 but not used in relation to crypto, the CFTC in December 2025 allowed a registered futures exchange to offer leveraged spot market sales.⁷⁶ (Leveraged purchases are those in which the exchange lends investors the

⁷⁰ Federal Reserve, “Federal Reserve Board Announces the Withdrawal of Guidance for Banks Related to Their Crypto-Asset and Dollar Token Activities and Related Changes to Its Expectations for These Activities,” press release, April 24, 2025, <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250424a.htm>.

⁷¹ Federal Reserve, “Federal Reserve Board Announces the Withdrawal of Guidance for Banks Related to Their Crypto-Asset and Dollar Token Activities and Related Changes to Its Expectations for These Activities,” press release, April 24, 2025, <https://www.federalreserve.gov/newsevents/pressreleases/bcreg20250424a.htm>. For the original orders, see Federal Reserve, “Joint Statement on Crypto-Asset Risks to Banking Organizations,” January 3, 2023, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20250424a1.pdf>; and Federal Reserve, “Joint Statement on Liquidity Risks to Banking Organizations Resulting from Crypto-Asset Market Vulnerabilities,” February 23, 2023, <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20250424a2.pdf>.

⁷² SEC, “SEC Crypto 2.0: Acting Chairman Uyeda Announces Formation of New Crypto Task Force,” Press Release 2025-30, January 21, 2025, <https://www.sec.gov/newsroom/press-releases/2025-30>. In addition, on February 20, 2025, the SEC announced the creation of yet another unit focusing threats from emerging technologies. It is unclear whether this unit replaces or complements the Crypto Task Force. See SEC, “SEC Announces Cyber and Emerging Technologies Unit to Protect Retail Investors,” Press Release 2025-42, February 20, 2025, <https://www.sec.gov/newsroom/press-releases/2025-42>.

⁷³ Paul S. Atkins, “American Leadership in the Digital Finance Revolution,” SEC, July 31, 2025, <https://www.sec.gov/newsroom/speeches-statements/atkins-digital-finance-revolution-073125>. For the President’s Working Group report, see President’s Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology*, July 30, 2025, <https://www.whitehouse.gov/crypto/>.

⁷⁴ Executive Order (E.O.) 14178 of January 23, 2025, “Strengthening American Leadership in Digital Financial Technology,” 90 *Federal Register* 8647, January 31, 2025, <https://www.federalregister.gov/documents/2025/01/31/2025-02123/strengthening-american-leadership-in-digital-financial-technology>.

⁷⁵ SEC, “Opening Remarks at Joint SEC-CFTC Harmonization Event – Project Crypto,” January 29, 2026, <https://www.sec.gov/newsroom/speeches-statements/atkins-remarks-joint-sec-cftc-harmonization-event-project-crypto-012926>. The harmonization is a collaboration between the SEC and CFTC to coordinate regulation of the industry.

⁷⁶ CFTC, “CFTC Issues Interpretation Concerning Retail Commodity Transactions,” Release No. 6673-13, August 23, 2013, <https://www.cftc.gov/PressRoom/PressReleases/6673-13>; and CFTC, “Acting Chairman Pham Announces First-Ever Listed Spot Crypto Trading on U.S. Regulated Exchanges,” Release no. 9145-25, December 4, 2025, <https://www.cftc.gov/PressRoom/PressReleases/9145-25>.

money used for the spot market purchase. In such cases, the transactions are treated as if they were futures.)⁷⁷

The shifting regulatory environment creates uncertainty for businesses that want to operate within the letter and spirit of the regulatory framework. This uncertainty is perhaps most tangible when regulators and industry are at odds over the correct path forward. In those periods in the past, crypto proponents sought legislation in attempts to clear impasses with agencies. However, under new regulatory leadership, agencies have offered a regulatory approach that is more closely aligned with that preferred by industry, engaging with industry, issuing no-action letters, and providing a venue where firms can address their concerns and seek clarity.

This most recent regulatory shift—which entails the rescission of enforcement actions and guidance, engagement with the industry, and new favorable guidance—has been pronounced. While it is feasible that the new guidance will bring greater clarity to the industry—providers and customers alike—it remains unclear whether it alone can fill the perceived legislative gap and whether new rules will be any more durable than in previous periods. From a market integrity perspective, the aforementioned activities introduce the question of what the threshold is for bringing an enforcement action.⁷⁸

Legislation in the 119th Congress

Following precedent established in the 118th Congress (2023-2024), the 119th Congress (2025-2026) has considered cryptocurrency-related measures in two separate pieces of legislation. The first addresses stablecoin issuers. The second would address (non-stablecoin) cryptocurrency activities and intermediaries, often referred to together as the *market structure*.⁷⁹ Congress passed the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act; P.L. 119-27) in July 2025, establishing a regulatory structure for payment stablecoins. (Certain provisions in the GENIUS Act have limited market structure implications.) Various bills covering broader market structure have been introduced in the 119th Congress. The House passed the Digital Asset Market Clarity Act of 2025 (CLARITY Act; H.R. 3633) on July 17, 2025. In addition to providing a regulatory framework for market structure, the CLARITY Act would also ban the development or creation of a central bank digital currency (CBDC)—a “digital dollar” issued by the Federal Reserve.⁸⁰ Various committees in the Senate are considering legislation that would address different facets of the industry. The Senate Committee on Agriculture, Nutrition, and Forestry reported S. 3755, the Digital Commodity Intermediaries Act, in February 2026.⁸¹ In May 2026, the Senate Banking, Housing, and Urban Affairs Committee ordered to be reported favorably an amendment in the nature of a substitute of H.R. 3633.⁸² The bill is intended to be a

⁷⁷ 7 U.S.C. §2(c)(2)(D).

⁷⁸ U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs (Minority), “Warren Presses SEC Chair Atkins on Enforcement Chief’s Sudden Resignation, Lack of Enforcement Data,” press release, March 30, 2026, <https://www.banking.senate.gov/newsroom/minority/warren-presses-sec-chair-atkins-on-enforcement-chiefs-sudden-resignation-lack-of-enforcement-data>.

⁷⁹ Market structure legislation would generally limit oversight of stablecoins to sales on intermediaries’ platforms.

⁸⁰ For more on central bank digital currencies (CBDCs), see CRS In Focus IF11471, *Central Bank Digital Currencies*, by Marc Labonte and Rebecca M. Nelson.

⁸¹ S. 3755 was reported without a written report. See “All Actions: S. 3755—119th Congress (2025-2026),” <https://www.congress.gov/bill/119th-congress/senate-bill/3755/all-actions>. On March 12, 2026, Sen. Boozman introduced S. 4064 with the same name as S. 3755.

⁸² Senate Banking, Housing, and Urban Affairs—Majority (Republican), “Chairman Scott, Senate Banking Committee Advance Clarity Act in Historic Bipartisan Vote,” press release, May 14, 2026, <https://www.banking.senate.gov/> (continued...)

complementary bill to S. 3755, with which it will presumably be combined if and before it goes to the floor for a vote.

Stakeholder Engagement

Congressional interest in regulating cryptocurrency has been growing over the past few Congresses. Earlier disagreements over the merits of cryptocurrency and how to regulate it made the prospect of enacting legislation difficult. The composition of the 119th Congress changed that somewhat. While there has been consistent bipartisan support for cryptocurrency in the past, current leadership in both chambers and the committees of jurisdiction appear favorable to legislation.⁸³ Moreover, President Trump has issued various crypto-related executive orders highlighting his engagement on the issue. These include Executive Order 14178, “Strengthening American Leadership in Digital Financial Technology,” “to promote United States leadership in digital assets and financial technology while protecting economic liberty,” and E.O. 14233, “Establishment of the Strategic Bitcoin Reserve and United States Digital Asset Stockpile.”⁸⁴ The announcement accompanying E.O. 14233 suggested that the President was following through on his “pledge to make America the crypto capital of the world.”⁸⁵ Combined, the congressional composition and presidential engagement were also instrumental in the passage of the GENIUS Act (P.L. 119-27), which establishes a regulatory framework for stablecoins.⁸⁶ These factors and the GENIUS Act’s enactment had also seemed likely to lead to passage of broader cryptocurrency market structure legislation until some more recent developments.⁸⁷

The evolving composition of cryptocurrency stakeholders and their competition with other major financial industry stakeholders (such as banks) has been a new dynamic. For most of crypto’s existence, traditional financial firms had only limited exposure to cryptocurrency. This was based in part on the aforementioned lack of regulatory clarity and the fact that certain regulations had the practical effect of making bank engagement in certain crypto activities difficult to get approved or prohibitively expensive.⁸⁸ Certain traditional firm leaders had also expressed a

newsroom/majority/chairman-scott-senate-banking-committee-advance-clarity-act-in-historic-bipartisan-vote. See also: All Actions: H.R. 3633—119th Congress (2025-2026), <https://www.congress.gov/bill/119th-congress/house-bill/3633/all-actions?s=3&r=1&hl=hr+3633>. This report refers to the Amendment in the Nature of a Substitute as introduced on the Committee website and does not include any amendments adopted in the markup.

⁸³ Claire Williams, “Fintech and Crypto Are Having a Moment in the 119th Congress,” *American Banker*, January 14, 2025, <https://www.americanbanker.com/news/fintech-and-crypto-are-having-a-moment-in-the-119th-congress>.

⁸⁴ Brady Dale, “Trump Promises American Crypto ‘Going to the Moon,’” *Axios*, July 27, 2024, <https://www.axios.com/2024/07/27/trump-bitcoin-nashville-crypto-to-moon>; Executive Order 14178 of January 23, 2025, “Strengthening American Leadership in Digital Financial Technology,” 90 *Federal Register* 8647, January 23, 2025; and Executive Order 14233 of March 6, 2025, “Establishment of the Strategic Bitcoin Reserve and United States Digital Asset Stockpile,” 90 *Federal Register* 11789, March 11, 2025, <https://www.federalregister.gov/documents/2025/03/11/2025-03992/establishment-of-the-strategic-bitcoin-reserve-and-united-states-digital-asset-stockpile>.

⁸⁵ White House, “Fact Sheet: President Donald J. Trump Establishes the Strategic Bitcoin Reserve and U.S. Digital Asset Stockpile,” March 6, 2025, <https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-establishes-the-strategic-bitcoin-reserve-and-u-s-digital-asset-stockpile/>.

⁸⁶ For more on stablecoins, see CRS In Focus IF12984, *Key Issues in Stablecoin Legislation in the 119th Congress*, by Paul Tierno and Marc Labonte.

⁸⁷ To date, the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act; P.L. 119-27) has been signed into law, and the Digital Asset Market Clarity Act of 2025 (CLARITY Act; H.R. 3633) has passed the House, both with significant bipartisan support.

⁸⁸ Travis Hill, *Banking’s Next Chapter? Remarks on Tokenization and Other Issues*, Federal Deposit Insurance Corporation, March 11, 2024, <https://www.fdic.gov/news/speeches/2024/spmar1124.html> (wherein he discusses challenges to bank engagement in crypto posed by SEC Staff Accounting Bulletin 121).

philosophical opposition to the new asset class.⁸⁹ However, as crypto has become more widely accepted through changes at regulatory agencies and policymaker support, especially from the Trump Administration, bank offerings of crypto have increased.⁹⁰

The passage of the GENIUS Act may serve as a case study of who the primary and sometimes competing industry stakeholders are in the ongoing legislative debates about crypto. Among the various requirements that the GENIUS Act establishes is a prohibition on stablecoin issuers paying yield to stablecoin holders. Because of intricacies in the stablecoin market, the GENIUS Act may permit exchanges (a form of digital asset service provider) to pay their customers interest. Banks see this as a “loophole.”⁹¹ Banks fear that growth in stablecoins—which share similarities with bank deposits, in that they can be used as store of value and for payments—may drain deposits.⁹²

The crypto industry views bank opposition to yield as anticompetitive behavior by an entrenched incumbent—bank deposits may pay interest—to thwart entry by a potential competitor. Exchange operators also argue that banks can raise interest on deposits to retain customers.⁹³ Banks argue that if stablecoins function as deposits, they should be subject to bank regulation.⁹⁴ Additionally, while the GENIUS Act permits banks to issue stablecoins, they may be restricted from paying interest, depending on the model they establish for issuance.⁹⁵ Therefore, banks favor the strict prohibition on paying interest on stablecoins and have argued that Congress should close this “loophole” in market structure legislation.⁹⁶

Following passage of the GENIUS Act, there was reportedly significant disagreement between banks and crypto companies over the prohibition on interest provision and the need to close the “loophole.” The Senate released a new market structure draft in January, which would have strengthened the prohibition on interest.⁹⁷ On January 14, Coinbase withdrew support for the bill in part over the provision, furthering the appearance that the two industries’ views are irreconcilable.⁹⁸ On the same day, a scheduled markup of the draft was indefinitely postponed.⁹⁹

⁸⁹ In a 2022 hearing, the chairman and CEO of JPMorgan Chase referred to crypto as “decentralized Ponzi schemes.” See U.S. Congress, House Committee on Financial Services, *Holding Megabanks Accountable: Oversight of America’s Largest Consumer Facing Banks*, hearing, 117th Cong., 2nd sess., September 21, 2022, <https://www.congress.gov/event/117th-congress/house-event/115151/text>.

⁹⁰ Joshua Franklin, “JPMorgan Explores Lending Against Clients’ Crypto Holdings,” *Financial Times*, July 22, 2025, <https://www.ft.com/content/70279a78-6e48-49ec-a0c3-b091e9d87bc1>.

⁹¹ Letter from Joint Trades to Members of Congress, January 12, 2026, <https://www.aba.com/-/media/documents/letters-to-congress-and-regulators/jointltrsenatestablecoin20260112.pdf?rev=4b4dfa32876a439b912b7af649a1d300>.

⁹² Letter from Joint Trades to Members of Congress.

⁹³ Andrew Ross Sorkin, “Coinbase CEO Brian Armstrong on Crypto Regulation: Banks Should Compete on Level Playing Field,” CNBC, January 20, 2026, https://www.youtube.com/watch?v=Vq_7hZW5jc4, at 2:08.

⁹⁴ Amrith Ramkumar et al., “The Crypto CEO Who’s Become Enemy No. 1 on Wall Street,” *Wall Street Journal*, January 29, 2026, <https://www.wsj.com/finance/currencies/coinbase-ceo-brian-armstrong-wall-street-a7895786>.

⁹⁵ For more on the stablecoin yield debate, see CRS In Focus IF13174, *The Stablecoin Yield Debate*, by Paul Tierno and Marc Labonte.

⁹⁶ Letter from Joint Trades to Members of Congress.

⁹⁷ H.R. 3633, 119th Cong., §404(b) (discussion draft of an amendment in the nature of a substitute intended to be introduced by Sen. Tim Scott), https://www.banking.senate.gov/imo/media/doc/market_structure_draft.pdf.

⁹⁸ See Brian Armstrong (@brian_armstrong), “After reviewing the Senate Banking draft text over the last 48hrs, Coinbase unfortunately can’t support the bill as written,” X post, January 14, 2026, https://x.com/brian_armstrong/status/2011545247105355865.

⁹⁹ U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs (Majority), “Scott Statement on Market Structure Markup,” press release, January 14, 2026, <https://www.banking.senate.gov/newsroom/majority/scott-statement-on-market-structure-markup>.

The bill, with a new yield provision, was ordered to be reported in May 2026. The provision would prohibit exchanges from paying yield on a user’s holdings in a way that is “economically or functionally equivalent to the payment of interest or yield on an interest-bearing bank deposit.”¹⁰⁰ This amended provision received support from Coinbase but was opposed by banking groups.¹⁰¹

The relationship between crypto and traditional finance remains one of the key policy issues in the ongoing market structure legislative debate. The industry’s growth—if it persists—is likely to expand the realm of crypto transactions that banks and other traditional financial participants can engage in while also expanding the traditional financial transactions that crypto firms can engage in.¹⁰² It is thus possible that other market structure provisions will affect other traditional financial firms’ models. The disagreement over yield may prove to be a bellwether for how other debates may evolve. Congress may be repeatedly asked to resolve frictions between new and existing industry participants, which may have consequences for how markets evolve and are regulated.

Crypto Policy Issues

As discussed above, a perceived regulatory gap, changing regulatory perspectives, and evolution of stakeholder engagement have implications for potential cryptocurrency market structure legislation. Over the past several years, various policy issues have emerged as central to the ongoing legislative debate. The remainder of this report addresses these selected policy issues and how they may be addressed in legislation.

Regulatory Considerations

The cryptocurrency industry comprises several key activities—issuing cryptocurrency and raising funds, secondary-market trading, blockchain maintenance, and other activities—performed by different participants and conducted across various venues. Pieces of legislation introduced over the past several Congresses have introduced frameworks that would divide labor among regulatory agencies—primarily the SEC and CFTC—to regulate activities, participants, and venues. How cryptocurrency activities should be regulated, and who should be the primary regulators of these various activities, remain among the central policy issues in the legislative debate.

¹⁰⁰ While it would prohibit payment of interest on holdings, the bill would permit interest on transactions. According to §404(c)(2) (A): “The prohibition... shall not apply with respect to rewards or incentives based on bona fide activities or bona fide transactions that are not economically or functionally equivalent to the payment of interest or yield on an interest-bearing bank deposit.” Amendment in the Nature of a Substitute to H.R. 3633, introduced by Senator Tim Scott, Senate Banking, Housing, and Urban Affairs Committee, May 12, 2026, <https://www.banking.senate.gov/imo/media/doc/ehf26374.pdf>. The House-passed version of H.R. 3633 does not have a stablecoin yield provision.

¹⁰¹ See Brian Armstrong (@brian_armstrong), “Mark it up,” X post, May 1, 2026, https://x.com/brian_armstrong/status/2050325975226081308?s=20.

¹⁰² Rob Copeland, “Behind Wall Street’s Abrupt Flip on Crypto,” *New York Times*, August 13, 2025, <https://www.nytimes.com/2025/08/13/business/wall-street-banks-crypto-stablecoins.html>. Amendment in the Nature of a Substitute to H.R. 3633, introduced by Senator Tim Scott, Senate Banking, Housing, and Urban Affairs Committee, May 12, 2026, includes Title IV – Responsible Banking Innovation, which would include various crypto activities as “part of, or incidental to, the business of banking under the paragraph designated as the ‘Seventh’ of section 5136 of the Revised Statutes (12 U.S.C. 24).”

Division of Regulatory Responsibility

As discussed above, there may be any number of rationales supporting points of view that favor authorizing the SEC or the CFTC to be the primary regulator overseeing the cryptocurrency industry. Alternatively, Congress may choose to divide the regulatory burden such that different activities in the industry will come to be regulated by different regulators. The CLARITY Act of 2025 (H.R. 3633), which passed the House in July 2025, and Senate drafts would do that.¹⁰³ Bills in both chambers would establish the SEC as the authority over primary sales to investors of cryptocurrencies that are subject to an investment contract—when an issuer seeks to raise funds from issuance of a cryptocurrency (see discussion of recent SEC interpretive rule in “Shifting Regulatory Policy and Selected Recent Regulatory Activity”). Both bills would also give the SEC a primary role in determining whether the blockchain and associated digital asset to which assets are connected have reached a certain status—which correspond to different ideas of decentralization and maturity—and whether or when ongoing disclosures would no longer be required.¹⁰⁴ For the most part, the various bills would provide the CFTC with “exclusive jurisdiction with respect to any account, agreement, contract, or transaction involving a contract of sale of a digital commodity.”¹⁰⁵

As consequential as identifying the primary regulators for various activities is determining how regulatory frameworks will be applied. That is, once a regulator is authorized, Congress may decide whether to apply the existing framework—as it applies in traditional financial settings—or Congress may modify regulations to accommodate cryptocurrency participants. For example, Congress may choose to stipulate that primary sales of certain digital assets fall under the jurisdiction of the SEC and either that they are subject to traditional securities laws or establish a bespoke regulatory framework for the industry. The bills currently being debated and addressed in this report would apply modified frameworks. For example, while firms that seek to raise funds in conjunction with the primary issuance of a digital asset would be subject to the SEC’s jurisdiction and be required to file various disclosure reports, they would be exempt from most securities laws, including the registration requirement, provided the amount they seek to raise on an annual basis is less than \$50 million.¹⁰⁶

Another example of how the proposed legislation differs from the existing framework is the lack of a threshold for investing among nonaccredited investors. The cryptocurrency industry has experienced volatility, and the initial issuance of new cryptocurrencies—as those envisioned in legislation—are arguably risky. In the traditional securities regulatory framework, unregistered securities offerings are accompanied by rules that limit certain types of investments to accredited investors, or place limits on how much nonaccredited investors can invest in certain offerings, to

¹⁰³ H.R. 3633, S. 3755, and Amendment in the Nature of a Substitute to H.R. 3633, introduced by Senator Tim Scott, Senate Banking, Housing, and Urban Affairs Committee, May 12, 2026, <https://www.banking.senate.gov/imo/media/doc/ehf26374.pdf>, consider the CFTC and SEC jurisdictions separately.

¹⁰⁴ See, for example, H.R. 3633, §202, new §4B(b)(5)(D)(i), which would require that the SEC write rules within 270 days of the bill’s enactment “for terminating the disclosure requirements described in subparagraph (C) during the first fiscal year in which the digital commodity issuer does not engage in material ongoing efforts related to the mature blockchain system.” Amendment in the Nature of a Substitute to H.R. 3633, introduced by Senator Tim Scott, Senate Banking, Housing, and Urban Affairs Committee, May 12, 2026 119th Cong., §102(a) (new §4B(d)(3)(A) and (B)), <https://www.banking.senate.gov/imo/media/doc/ehf26374.pdf>

¹⁰⁵ H.R. 3633, §401(d). Also see S. 3755 §201 (c).

¹⁰⁶ The two bills covering this issue refer to the initial issuance somewhat differently. H.R. 3633, §202, as passed in the House, refers to them as “the offer or sale of an investment contract involving units of a digital commodity by its digital commodity issuer.” The most recent Senate draft, as of the publication date of this report, refers to it as an “offer, sale, or distribution of an investment contract involving an ancillary asset.”

protect ordinary investors.¹⁰⁷ Currently, the various bills being debated in Congress do not establish any limits on how much such investors can invest in cryptocurrency. A precursor to this bill, H.R. 4763 (118th Congress) would have limited the amount a nonaccredited investor could invest in initial sales to the greater of 10% of an investor’s annual income or 10% of the investor’s net worth during the preceding 12 months.¹⁰⁸

Taxonomies

Since Bitcoin was first introduced in 2009, tens of thousands of cryptocurrencies have been developed.¹⁰⁹ These cryptocurrencies may be similar in certain respects but differ in others, such as degrees of centralization/decentralization, including the levels of managerial oversight and control, and use cases. The sometimes overlapping and diverging natures of the broader set of cryptocurrencies may be one reason multiple regulators have claimed jurisdiction at different times. In addition, the quantity of cryptocurrencies in existence and the potential variation among them may account in part for why it has been difficult to establish a one-size-fits-all policy response.

Congress may therefore decide to establish a taxonomy according to which industry and regulators alike can determine how cryptocurrencies with certain characteristics should be regulated and by whom. Congress may choose to base such classifications on how well features or use cases align with traditional assets under those agencies’ jurisdictions, namely securities in the case of the SEC and commodities and derivatives in the case of the CFTC. As the regulatory debate has evolved, the central features of crypto most often addressed are those of “decentralization” and expectation of return. As such, taxonomical frameworks may thus entail some assessment of whether the asset’s use and efficacy rely on the managerial or entrepreneurial efforts of some common enterprise. Such taxonomical frameworks may also entail assessing whether the blockchain on which a cryptocurrency operates is or can be controlled by an individual or group of individuals operating under a common direction.¹¹⁰ Generally, the CLARITY Act addresses the classification through the lens of “blockchain maturity,” which is defined as a system that is not under control of a person, group, or persons or groups under common control.¹¹¹ The Senate Banking, Housing, and Urban Affairs Committee drafts have tended to classify tokens according to the level of entrepreneurial or managerial efforts and whether a token “derives, or is reasonably expected to derive, its value from the use of such distributed ledger system.”¹¹² Legislation introducing guidelines for categorization may also consider other potential distinguishing factors such as whether or not the asset provides the right

¹⁰⁷ CRS Report R45221, *Capital Markets: Public and Private Securities Offerings*, by Eva Su.

¹⁰⁸ H.R. 4763, 118th Cong., §301.

¹⁰⁹ See coingecko.com. As of January 2026, the site reported as many as 18,936 active cryptocurrencies.

¹¹⁰ For a discussion of certain attributes, see letter from Andreessen Horowitz (“a16z”) to Senate Banking Committee, “Re: Response to the Senate Banking Committee Digital Asset Market Structure Request for Information,” July 31, 2025, <https://d2hguprl3w2sje.cloudfront.net/uploads/2025/08/a16z-Response-to-Senate-Banking-Committee-Digital-Asset-Market-Structure-RFI.pdf>.

¹¹¹ H.R. 3633, §205. The bill establishes specific criteria according to which a blockchain is considered mature and not under common control, and includes the value being “substantially derived from the use and functioning of the blockchain system.” It also includes the blockchain being functional; open and interoperable; programmatic (meaning functions are executed according to preestablished code); subject to system governance (no one has unilateral authority); an impartial system (no one experiences unique privileges); and having distributed ownership.

¹¹² Amendment in the Nature of a Substitute to H.R. 3633, introduced by Senator Tim Scott, Senate Banking, Housing, and Urban Affairs Committee, May 12, 2026 119th Cong. §102 (a) new §4B(a)(1) and (7). See the definitions of *ancillary asset* and *network tokens*.

to a financial interest in a business and/or rights to future profits, cash flow, or dividends and what such rights would entail for categorization and regulation.¹¹³

The legislation could also take into consideration whether a classification system should allow for changes in nature—for example, from centralization to decentralization or along some other continuum. Recent interpretive guidance by the SEC says that the agency thinks the regulatory status of particular cryptocurrencies can shift (see discussion of recent SEC interpretive rule in “Shifting Regulatory Policy and Selected Recent Regulatory Activity”).

Legislation may consider how to treat transitions of a blockchain and related assets from one in which a company, individual, or group of individuals working together can control access to one in which they do not exhibit such control. Legislation may also consider whether a blockchain and associated asset that rely on the managerial efforts of a central entity to operate or turn a profit can convert to one that functions independently, or some other set of criteria, or a combination thereof. The legislation may also consider how to treat blockchains—generally considered outside the control of an organizing entity, but heavily reliant on informal groups for certain activities—that may exhibit concentration in asset holdings, mining or validating capacity, or executing programming/developing permissions. Such legislation may also seek to establish whether various crypto industry participants with specific roles in an asset’s issuance would be subject to certain restrictions or requirements, such as enhanced disclosure requirements or sales restrictions. Legislation may also address how agency involvement may shift at different phases of an asset’s evolution. It may also consider whether to future-proof the legislation, extending such assessments beyond blockchain technology to some financial technology not yet envisioned.

Such taxonomy may bring greater certainty to the industry. For instance, developers in decentralized finance (defi), which falls under the broader topic of crypto, have argued that the lack of regulatory clarity has been a burden and is the reason for a drop in certain development in the United States and motivation to develop overseas.¹¹⁴ A clearer delineation of crypto and defi classifications and associated regulatory regimes (see below) may also help divide labor across regulatory agencies. Some critics, however, have suggested that the creation of strict rules may create a blueprint that developers or companies can use to engage in regulatory arbitrage. Firms may be able to create products specifically intended to avoid specific regulatory treatment by being functionally similar to assets in one jurisdiction but legally subject to another.¹¹⁵ This could in turn shift the focus of the licensing and certification processes from assessing the facts and functional reality of a specific case to proving/disproving labels (such as decentralization) and how such labels are defined.

In addition, in an industry as technically complex and quickly evolving as cryptocurrency, it is unclear whether legislation can account for the various permutations or evolutions that may occur. Moreover, in attempting to make legislation complete, legislators may capture activities governed

¹¹³ H.R. 3633 (the CLARITY Act), §205 (which would add new §42 to the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.)).

¹¹⁴ Uniswap, “Wells Submission on Behalf of Uniswap Labs,” May 21, 2024, <https://blog.uniswap.org/wells-notice-response.pdf>; and letter from DeFi Education Fund to Senate Committees on Banking and Agriculture, August 27, 2025.

¹¹⁵ Testimony of Timothy G. Massad in U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, Digital Assets Subcommittee, *Exploring Bipartisan Legislative Frameworks for Digital Assets*, hearing, 119th Cong., 1st sess., February 26, 2025, p. 18, https://www.banking.senate.gov/imo/media/doc/massad_testimony_2-26-25.pdf. Also see Timothy Massad discussing in U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *From Wall Street to Web3: Building Tomorrow’s Digital Asset Markets*, at <https://plus.cq.com/doc/congressionaltranscripts-8281724?7>, wherein he says, with regard to the CLARITY Act, “I think it’s 236 pages of regulatory arbitrage opportunities for creative lawyers.”

by existing law or not otherwise intended to be targets of the legislation. It may also be challenging for legislation to consider and account for an asset's evolution along a centralization-decentralization continuum that is not clear or perhaps purposefully blurred. For example, how should regulators treat assets that meet certain technical standards, but not others? Also, terms used in cryptocurrency may be used across adjacent industries, including *defi*, traditional finance's use of *blockchain*, and business logistics stored through *blockchain* technology, and these activities may be captured by prospective legislation.

What to Do About Decentralized Finance (Defi)?

Another key policy issue in the cryptocurrency debate is the treatment of defi and whether such treatment should be distinguished from treatment of centralized cryptocurrency service providers. *Defi* refers to the suite of crypto-based financial activities and services facilitated by cryptocurrency that are intended to be conducted without any intermediaries.¹¹⁶ Users can interact with cryptocurrencies in various ways: through centralized cryptocurrency platforms—intermediaries that operate infrastructure and custody assets on behalf of individuals—or through defi, which uses software and performs transactions in a decentralized manner.¹¹⁷ Defi protocols allow users to perform many of the same functions as their centralized exchange counterparts—such as holding, trading, and/or borrowing assets—by using software such as unhosted wallets and smart contracts. Activities encompassed under the heading of defi range from certain activities fundamental to the functioning of blockchains on which cryptocurrencies transact, such as mining and validating, to cryptocurrency-backed services that mimic traditional financial activities, such as lending and trading.

Currently, there is not an overarching legislative or regulatory framework for defi.¹¹⁸ As with cryptocurrency, various regulators have applied laws and regulations where they had interpreted their authorities as applying to certain defi transactions, services, or platforms. Since the start of the second Trump Administration, that interpretation has generally shifted, leading regulators to rescind guidance or withdraw enforcement actions aimed at defi. For example, in April 2024, Uniswap Labs, the developer behind the largest decentralized exchange, reportedly received a Wells Notice from the SEC Enforcement Division notifying the platform of the regulator's intention to bring legal action against Uniswap, in part for operating as an unregistered exchange;¹¹⁹ however, in February 2025, Uniswap reported that the SEC had closed its investigation into the app.¹²⁰ Therefore, whether a defi exchange must register with various

¹¹⁶ CRS Report R48883, *An Overview of Decentralized Finance (Defi)*, by Paul Tierno.

¹¹⁷ See the “Ways to Interact with Crypto” section of CRS Report R47425, *Cryptocurrency: Selected Policy Issues*, by Paul Tierno.

¹¹⁸ Notwithstanding the GENIUS Act (P.L. 119-27), which touches defi only tangentially.

¹¹⁹ Uniswap, “Fighting for DeFi,” April 10, 2024, <https://blog.uniswap.org/fighting-for-defi>; and Uniswap, “Wells Submission on Behalf of Uniswap Labs,” May 21, 2024, <https://blog.uniswap.org/wells-notice-response.pdf>. The Wells notice was issued prior to recent changes to the SEC's Enforcement Manual. According to the SEC's 2017 *Enforcement Manual* (referenced through an archived version of the website), “A Wells notice is a communication from the staff to a person involved in an investigation that: (1) informs the person the staff has made a preliminary determination to recommend that the Commission file an action or institute a proceeding against them; (2) identifies the securities law violations that the staff has preliminarily determined to include in the recommendation; and (3) provides notice that the person may make a submission to the Division and the Commission concerning the proposed recommendation.” See SEC, Division of Enforcement, *Enforcement Manual*, November 28, 2017, p. 17, <https://web.archive.org/web/20250107030150/https://www.sec.gov/divisions/enforce/enforcementmanual.pdf>.

¹²⁰ Uniswap, “A Win for DeFi—SEC Closes Investigation into Uniswap Labs,” February 25, 2025, <https://blog.uniswap.org/a-win-for-defi>.

regulatory agencies such as the SEC and the CFTC appears to have changed based on the current legal interpretation and policy of leadership at the agency at a given time.

Congress may decide to pass legislation applicable to all platforms that allow crypto trading—irrespective of whether those platforms are centralized or decentralized—requiring that the platforms register with some market regulator. Alternatively, Congress could explicitly exclude defi exchanges (or DEXes) from registration requirements. Should Congress choose not to legislate on crypto or defi, regulatory treatment would presumably remain with the agencies and their presidentially appointed leadership.

From industry’s perspective, some participants believe that enforcing compliance with rules required of certain traditional entities would “chill the kind of innovation on US soil that benefits individual consumers” and discourage future innovators.¹²¹ In addition, some industry proponents believe that codifying exemptions would establish regulatory clarity and stop the slide in open-source software development occurring in the United States, which one estimate claims has fallen from 25% of global development in 2021 to 18% in 2025.¹²² A recent report by the President’s Working Group on Digital Asset Markets noted that reversing such a decline was key to its goal of making the United States the “crypto capital of the world.”¹²³

Exempting defi platforms such as DEXes from registration with market regulators while establishing the requirement for centralized platforms—either in new legislation or in some guidance from market regulators—would codify a different regulatory treatment for similar activities. In such an instance, whether a platform is regulated would depend not on the type of activity but on the nature of the platform or participant. This approach would run counter to certain recommendations to regulate similar financial activities and risks similarly.¹²⁴ Such divergent regulatory treatments could have the effect of leading market participants to engage in a form of regulatory arbitrage, whereby a firm engages in certain business activities—such as choosing a certain corporate or organizational structure or charter—based on regulatory treatment. Such differential treatment could encourage providers to engage in defi applications in lieu of or in addition to centralized activities.

A scenario in which defi applications are omitted from a potential crypto regulatory framework—and not subject to potential rules applied to their centralized counterparts—might raise questions of whether other assets (such as blockchain-based tokenized securities) whose issuance and trading are subject to SEC regulation would be allowed to be traded on decentralized and unregulated exchanges.

Over the past couple of years, Congress has been engaged in various interconnected but somewhat distinct conversations on stablecoins, market structure, and defi. The bills that have seen action in the 119th Congress treat defi and crypto market structure somewhat separately. This highlights the degree to which crypto has been re-intermediated—in that legislation would mostly apply to centralized intermediaries—and highlights that, despite proposed legislation, the primary

¹²¹ Uniswap, “Wells Submission on Behalf of Uniswap Labs.”

¹²² Letter from DeFi Education Fund to Senate Committees on Banking and Agriculture, August 27, 2025.

¹²³ President’s Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology*, July 30, 2025, p. 23, <https://www.whitehouse.gov/crypto/>.

¹²⁴ “The [Financial Stability Board] will continue to facilitate cross-border and cross-sectoral cooperation among national financial authorities and international standard-setting bodies as they work towards developing a common understanding of the wide spectrum of crypto-assets as well as regulatory and supervisory policies that are risk-based[,] technology-neutral, and grounded in the principle of ‘same activity, same risk, same regulation.’” Financial Stability Board, “FSB Statement on International Regulation and Supervision of Crypto-Asset Activities,” July 11, 2022, pp. 1-2. <https://www.fsb.org/uploads/P110722.pdf>.

debate of whether and how to regulate decentralized assets and systems that are categorized as defi remains.

The July 2025 House-passed CLARITY Act—a market structure bill—states that defi activities would not be subject to the act. Specifically, activities such as “compiling” and “validating” transactions and “providing computational work” would not be subject to the provisions of the bill. Similarly, “[d]eveloping, publishing, constituting, administering, maintaining, or otherwise distributing a blockchain system or a decentralized finance trading protocol” would not be subject to regulation. Pieces of stand-alone legislation that address components of defi have also been incorporated into the CLARITY Act. One such provision—introduced in H.R. 3533, the Blockchain Regulatory Certainty Act, and incorporated into the CLARITY Act—states that a “non-controlling blockchain developer or provider of a blockchain service” would not be treated as a money transmitter, a provision that likely captures some defi services. Being labeled as a money transmitter or other financial intermediary would require registration with the Financial Crimes Enforcement Network (FinCEN) and compliance with the Bank Secrecy Act and other anti-money-laundering statutes and regulations (BSA/AML). Proposed legislation in the Senate would also exclude most elements of defi with language that exempts “software developers,” including those that operate defi protocols or liquidity pools, from the bill’s provisions.¹²⁵ Alternatively, in previous Congresses, some Members have introduced legislation that would treat various features of the defi ecosystem—including miners, validators, and unhosted wallet providers, among others—as financial institutions and thus subject to the BSA.¹²⁶

Illicit Financial Activity and Fraud

Criminals and illicit actors may exploit various features of cryptocurrency technology and the broader ecosystem to facilitate illegal activity. Blockchain-based crypto and defi activity are public and pseudonymous in nature—meaning that even though all transactions are public, users are known by a string of alphanumeric characters unconnected to a person’s identity—and permit the creation of multiple such pseudonyms. Crypto is also borderless, decentralized, and censorship-resistant—meaning participants and transactions are not blocked. Transactions processed on the blockchain are immediate and irreversible, which means once cryptocurrency is sent it cannot be retrieved. For such transactions, there is no centralized customer help hotline to assist customers. While centralized crypto exchanges are subject to BSA/AML requirements—depending on the jurisdiction—they regularly interact with the blockchain-based segment and are thus exposed to its associated risks. Compliance with BSA/AML laws among centralized entities may be inconsistent depending on the jurisdiction or entity in question.¹²⁷ The assumption that crypto is more widely accepted than it is, and a relative lack of understanding of how it works by those being targeted, lend it a sense of both legitimacy and mystery that fraudsters may exploit. Key regulatory policy considerations include whether the existing BSA/AML and anti-fraud framework is appropriately calibrated to address concerns arising in the crypto industry. Whether

¹²⁵ S. 3755, §207, states, “Notwithstanding any other provision of this Act, except as provided in subsection (b), a person shall not be subject to this Act and the regulations promulgated under this Act based on the person directly or indirectly engaging in any of the following activities, whether singly or in combination, in relation to the operation of a blockchain system or in relation to a decentralized finance trading protocol... Constituting, administering, or maintaining a decentralized finance messaging system or decentralized finance trading protocol, or operating or participating in a liquidity pool with respect thereto, for the purpose of executing a spot transaction for the purchase or sale of a digital commodity.” A similar provision in the Senate Banking, Housing, and Urban Affairs draft introduced in January 2027 would relieve developers from certain registration requirements and penalties for failing to register.

¹²⁶ See, for example, S. 2669 (118th Cong.) and S. 2355 (118th Cong.).

¹²⁷ See David Yaffe-Bellany and Michael Forsythe, “The Trail of Clues Leading to Iran That Binance Missed,” *New York Times*, March 26, 2026, <https://www.nytimes.com/2026/03/26/technology/binance-iran-us-sanctions.html>.

and how Congress decides to legislate crypto could have implications for how much illicit financial activity occurs across various methods for interacting with crypto.

Currently, at the federal level, certain categories of cryptocurrency firms (including exchanges, payment platforms, and ATMs) are considered money services businesses, a type of financial institution, and must register with FinCEN for BSA/AML compliance.¹²⁸ They must establish customer identification programs and abide by certain reporting and recordkeeping requirements to prevent money laundering or other financial crimes. FinCEN applies the requirements to platforms based on the nature of the business model and the function performed regardless of label, which means they may be applied to centralized or some decentralized firms.¹²⁹

The Consumer Financial Protection Bureau (CFPB) and Federal Trade Commission (FTC) also have authority to protect consumers from unfair and deceptive practices such as those that may be employed in cryptocurrency frauds. According to one law firm, the FTC relied on Section 5 of the Federal Trade Commission Act (15 U.S.C. §45; FTC Act) to bring a case against two firms for falsely claiming their customers' cryptocurrency was backed by the Federal Deposit Insurance Corporation.¹³⁰ The FTC has also reportedly used authority established in the Gramm-Leach-Bliley Act of 1999 (GLBA; P.L. 106-102), which requires that financial firms protect customer data and privacy, to investigate crypto firms.¹³¹ The CFPB, created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), established enhanced federal consumer protection regulatory authority over nondepository financial companies—for instance, by providing the CFPB with supervisory and examination authority over certain nondepository financial companies.¹³² As such, the CFPB has investigated certain companies; issued advisories and guidance, including regarding claims of FDIC insurance; published a 2022 analysis of consumer complaints; and held related events.¹³³

There have also been a handful of initiatives by the Federal Bureau of Investigation (FBI) to address investment scams in particular. These include the creation of the Virtual Assets Unit in 2022, which was established to investigate crypto-related crimes; Operation Level Up, which is intended to identify and notify victims of such crimes; and coordination with international law enforcement. (For more on cryptocurrency investment fraud, see CRS In Focus IF13008, *Cryptocurrency Investment Scams*, by Peter G. Berris and Kristin Finklea.)

¹²⁸ Department of the Treasury Financial Crimes Enforcement Network (FinCEN), "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," FIN-2013-G001, March 18, 2013, <https://www.fincen.gov/system/files/guidance/FIN-2013-G001.pdf>.

¹²⁹ FinCEN, "Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies," FIN-2019-G001, May 9, 2019, pp. 2, 18, <https://www.fincen.gov/system/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf#page=2>.

¹³⁰ Alexander C. Drylewski et al., "Crypto Regulation: Who Will Protect Consumers Against Fraud?," Skadden, February 24, 2025, <https://www.skadden.com/insights/publications/2025/02/crypto-regulation-who-will-protect-consumers>.

¹³¹ Alexander C. Drylewski et al., "Crypto Regulation: Who Will Protect Consumers Against Fraud?" For more on GLBA, see CRS Report R47434, *Banking, Data Privacy, and Cybersecurity Regulation*, by Andrew P. Scott and Paul Tierno.

¹³² See CRS Report R41350, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Background and Summary*, coordinated by Baird Webel, and CRS In Focus IF10031, *Introduction to Financial Services: The Consumer Financial Protection Bureau (CFPB)*, by Karl E. Schneider and David H. Carpenter.

¹³³ CFPB, "Consumer Financial Protection Circular 2022-02: Deceptive Representations Involving the FDIC's Name or Logo or Deposit Insurance," May 17, 2022, <https://www.consumerfinance.gov/compliance/circulars/circular-2022-02-deception-representations-involving-the-fdics-name-or-logo-or-deposit-insurance/>. See also CFPB, "Fraud Fighters: Crypto-Asset Scams," August 22, 2024, <https://www.consumerfinance.gov/about-us/events/archive-past-events/fraud-fighters-crypto-asset-scams/>.

Magnitude of Illicit Finance and Fraud Risk¹³⁴

Application of existing regulations and codifying certain exemptions for crypto may have significant consequences. Discussions of uneven BSA/AML and sanctions compliance generally acknowledge that some level of illicit activity—including sanctions evasions—is occurring via defi applications. The pervasiveness of the use of blockchains in facilitating illicit activity has been ardently debated for some time.

According to a notice of proposed rulemaking in 2020, FinCEN reported that it had received suspicious activity reports of approximately \$119 billion associated with crypto, or what it said would equate to 11.9% of U.S.-based cryptocurrency industry activity.¹³⁵ Blockchain analytics firms estimate on-chain illicit activity to be around \$154 billion—an amount that is equivalent to less than 1% of activity.¹³⁶ Those blockchain analytics firms generally do not include activity in centralized platforms and are limited to counting activity to illicit addresses (parties already known to them), and are thus likely underestimating the total. Media investigations or enforcement actions have provided insight into violations of BSA/AML requirements at centralized cryptocurrency platforms.¹³⁷ While there is not a consensus regarding the magnitude of use of digital assets for illicit activity, the U.S. Treasury noted the following in its 2024 National Money Laundering Risk Assessment:

While the use of virtual assets for money laundering continues to remain far below that of fiat currency and more conventional methods that do not involve virtual assets, U.S. law enforcement agencies have observed virtual assets being misused for ransomware, scams, drug trafficking, human trafficking, and other illicit activities.¹³⁸

The total amount of fraud losses generated from or perpetrated through cryptocurrency is somewhat unclear. While there is not one definitive repository for crypto-related fraud statistics, various federal agencies publish data on fraud. It is also likely that such figures are contingent on how certain incidents are classified. As a result, various estimates accounting for the amount of money lost to crypto scams range from \$1 billion to more than \$9 billion. According to one estimate published by the Federal Trade Commission, consumers lost more than \$1 billion to crypto scams in the year-and-a-quarter period between January 2021 and March 2022.¹³⁹ More recently, the FBI reported in its Internet Crime Report, which tracks cybercriminal activity, that in 2024 more than \$9 billion was lost in crimes in which crypto was used to facilitate a crime, up by

¹³⁴ This subsection includes various estimates of illicit crypto activity. The different estimates may vary in terms of which activities are assessed.

¹³⁵ Department of the Treasury, Financial Crimes Enforcement Network, “Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets,” 85 *Federal Register* 83840, December 23, 2020. p. 83841, <https://www.federalregister.gov/documents/2020/12/23/2020-28437/requirements-for-certain-transactions-involving-convertible-virtual-currency-or-digital-assets>.

¹³⁶ Chainalysis, “2025 Crypto Crime Trends,” January 15, 2025, <https://www.chainalysis.com/blog/2025-crypto-crime-report-introduction/>.

¹³⁷ New York State Department of Financial Services, Coinbase Consent Order, January 4, 2023, https://www.dfs.ny.gov/system/files/documents/2023/01/ea20230104_coinbase.pdf; and DOJ, “Binance and CEO Plead Guilty to Federal Charges in \$4B Resolution,” press release, November 21, 2023, <https://www.justice.gov/archives/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution>.

¹³⁸ Department of the Treasury, *2024 National Money Laundering Risk Assessment*, February 1, 2024, p. 59, <https://home.treasury.gov/system/files/136/2024-National-Money-Laundering-Risk-Assessment.pdf>.

¹³⁹ Emma Fletcher, “Reports Show Scammers Cashing in on Crypto Craze,” *Data Spotlight* (Federal Trade Commission blog), June 3, 2022, <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammers-cashing-crypto-craze>.

66% from roughly \$5 billion in 2023.¹⁴⁰ Regarding classification, it is unclear whether these reports or figures include institution-wide incidents such as those at FTX, a cryptocurrency exchange that was charged with using customer funds for its own purposes, among others.

Fraud statistics compiled by the FBI includes investment scams and those including digital asset kiosks, sometimes referred to as crypto ATMs. According to the report, investment scams involving crypto account for more than \$5.8 billion in losses in 2024, the most by dollar amount (second by number of complaints) of a fraud or crime with a crypto nexus.¹⁴¹ Losses associated with crypto ATMs were about \$250 million in 2024. In both trends, the largest group affected were persons age 60 and over, both in the total amount lost and the number of complaints.¹⁴²

Illicit Finance and Fraud Policy Issues

In 2022, President Biden issued Executive Order 14067, which, in describing that Administration’s digital asset policy priorities, highlighted the importance of “preventing crime and illicit finance.”¹⁴³ Despite this executive order and other regulations, Treasury had implied in an April 2023 report that there was likely limited compliance among some sectors of the industry—including defi—with respect to BSA/AML regulations such as registration.¹⁴⁴ Reportedly, only a small number of defi entities have registered with a regulator of any kind, and it is unclear whether any have registered with FinCEN and to what extent they comply with such sanctions and BSA/AML laws.¹⁴⁵ In that context, in November 2023, Treasury circulated a series of legislative requests that included, among other proposals, the creation of a new category of financial institutions, explicit requirements that certain defi software and platforms be subject to the BSA, and provision of Treasury with authority to sanction specific blockchain nodes or networks—presumably to target specific smart contract-based applications.¹⁴⁶

As with other regulatory priorities, this policy stance changed under the Trump Administration. First, in January 2025, President Trump issued Executive Order 14178 related to the incoming Administration’s digital asset policy, which revoked Executive Order 14067, among other things.¹⁴⁷ In April 2025, the Deputy Attorney General wrote a memorandum to staff at the Department of Justice, the agency that prosecutes violations of the BSA, that stated it would “no longer pursue litigation or enforcement actions that have the effect of superimposing regulatory

¹⁴⁰ Federal Bureau of Investigation (FBI), *Internet Crime Report*, 2024, p. 35, https://www.ic3.gov/AnnualReport/Reports/2024_IC3Report.pdf. The report, which compiles data from complaints filed by victims of crimes, cites “cryptocurrency” as a “descriptor” of the type of medium or tool used to facilitate a fraud or crime and not necessarily as a crime itself and may only be selected after a crime type has been selected.

¹⁴¹ FBI, *Internet Crime Report*, 2024, p. 36.

¹⁴² FBI, *Internet Crime Report*, 2024, p. 36.

¹⁴³ Executive Order 14067 of March 9, 2022, “Ensuring Responsible Development of Digital Assets,” 87 *Federal Register* 14143, March 14, 2022, <https://www.federalregister.gov/documents/2022/03/14/2022-05471/ensuring-responsible-development-of-digital-assets>.

¹⁴⁴ Department of the Treasury, *Illicit Finance Risk Assessment of Decentralized Finance*, April 2023, p. 9, <https://home.treasury.gov/system/files/136/DeFi-Risk-Full-Review.pdf>.

¹⁴⁵ Department of the Treasury, *Illicit Finance Risk Assessment of Decentralized Finance*, p. 9.

¹⁴⁶ Department of the Treasury, “Potential Options to Strengthen Counter-Terrorist Financing Authorities,” November 28, 2023, <https://web.archive.org/web/20240417214813/https://www.coincenter.org/app/uploads/2023/12/11.28.2023-Counter-TF-Legislative-Proposals.pdf>.

¹⁴⁷ Executive Order 14178 of January 23, 2025, “Strengthening American Leadership in Digital Financial Technology,” 90 *Federal Register* 8647, January 31, 2025. See also CRS In Focus IF11064, *U.S. Efforts to Combat Money Laundering, Terrorist Financing, and Other Illicit Financial Threats*, by Rena S. Miller and Liana W. Rosen.

frameworks on digital assets.”¹⁴⁸ It also directed prosecutors to “not charge regulatory violations in cases involving digital assets—including but not limited to unlicensed money transmitting ... unless there is evidence that the defendant knew of the licensing or registration requirement at issue and violated such a requirement willfully.” This was construed by some as deprioritizing regulatory compliance.¹⁴⁹ The President’s Working Group report on digital assets included certain inconsistencies regarding these issues. While it addressed illicit activity in an entire chapter in which it “encourages the adoption of certain measures to deter and combat illicit finance,” it also praised the aforementioned DOJ memorandum.¹⁵⁰ It noted that DOJ would focus attention on uses that defraud investors and use digital assets for criminal offenses, yet praised the disbanding of DOJ’s National Cryptocurrency Enforcement Team and the refocusing of its Market Integrity and Major Frauds Unit on other issues.¹⁵¹

These issues of fraud are particularly challenging because the system that permits them was designed, in part, to work outside of traditional frameworks. The decentralized nature, for example, includes built-in redundancy on the occasion that certain key components are targeted. There is not agreement among industry participants or policymakers on these issues, especially in the context of self-custody, which appeals to privacy advocates. Nevertheless, Congress may choose to address these issues either by targeting the entire industry—which may be difficult to implement in practice, for aforementioned decentralization reasons—or by targeting those industry components that may be easier to regulate, such as centralized platforms. The CLARITY Act, for example, includes certain provisions that would prohibit fraud—mostly that which occurs in the course of trading.¹⁵² The bill would also state that cryptocurrency exchanges are financial institutions for the purposes of the BSA.¹⁵³ This largely seems to codify in statute what already applies via guidance. However, the bills do not address all fraud issues.¹⁵⁴ Moreover, various bills do not apply to certain components of the industry, such as defi protocols, those using self-hosted wallets for lawful purposes, and certain blockchain operators.¹⁵⁵

The intersection of decentralized activities with centralized activities represents another policy issue. Centralized intermediaries, such as exchanges, are required to comply with AML laws and regulations, presumably including transactions between a firm’s customers and certain aspects of the decentralized ecosystem, such as self-custody wallets. However, it is unclear how closely such requirements are enforced. In 2020, FinCEN proposed a rule that would have required platforms to “verify the identity of customers in relation to transactions above certain thresholds

¹⁴⁸ Office of the Deputy Attorney General Todd Blanche, “Memorandum for All Department Employees: Ending Regulation by Prosecution,” Department of Justice, April 7, 2025.

¹⁴⁹ Kelly A. Lenahan-Pfahlert et al., “A New Era for Digital Assets: The Impact of DOJ’s Shift Away from Regulation by Prosecution and Its Implications,” Ballard Spahr, April 15, 2025, <https://www.moneylaunderingnews.com/2025/04/a-new-era-for-digital-assets-the-impact-of-doj-s-shift-away-from-regulation-by-prosecution-and-its-implications/>.

¹⁵⁰ President’s Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology*, July 30, 2025, p. 100.

¹⁵¹ President’s Working Group on Digital Asset Markets, *Strengthening American Leadership in Digital Financial Technology*, July 30, 2025, pp. 100-101.

¹⁵² H.R. 3633, §§302, 406 (in new §4u to be added to the CEA).

¹⁵³ H.R. 3633, §110.

¹⁵⁴ H.R. 3633 does not address cryptocurrency kiosks. However, the Senate Banking, Housing, and Urban Affairs Committee Amendment in the Nature of a Substitute to H.R. 3633 does include a separate section related to digital kiosk fraud prevention, including provisions that require providing warnings, maintaining an anti-fraud policy, and holding periods for certain transactions, among others. See Amendment in the Nature of a Substitute to H.R. 3633, introduced by Senator Tim Scott, Senate Banking, Housing, and Urban Affairs Committee, May 12, 2026, §205.

¹⁵⁵ See, for example, H.R. 3633, §309.

involving [cryptocurrency] wallets not hosted by a financial institution.”¹⁵⁶ While the rule was never finalized, its introduction highlights the gap in requirements. As crypto grows and becomes further intertwined with the traditional financial system, the amount of capital and the number of people who have access to less-regulated systems is likely to grow.

The largest fraud and illicit finance-related policy issue, however, remains—as with other cryptocurrency-related topics—how agencies will implement and enforce new legislation or existing statutes. The current Administration has taken a series of actions—punctuated by a presidential pardon of the former chief executive officer of Binance, who pleaded guilty to federal charges that included infractions of BSA/AML compliance laws—that raise the question of whether there is interest in increased enforcement against fraud and other illicit activity and what that may look like.

Ethics Issues

Ethics-related policy issues have emerged since January 2025 in light of President Trump’s and his family members’ involvement in cryptocurrency projects. These issues include whether certain current ethics laws apply to the President and/or other Administration officials and whether existing laws include cryptocurrencies and stablecoins or whether amendments that explicitly include cryptocurrencies are required. President Trump’s and his family’s reported involvement with or promotion of various crypto enterprises, which began before his inauguration in January 2025, has grown to include alleged affiliation with two meme coins and a stablecoin.¹⁵⁷ Various media reports have suggested that the President’s promotion of and involvement of cryptocurrency has been a main driver of significant increases in his and his family’s wealth.¹⁵⁸

Since the beginning of his second Administration, President Trump has introduced various policy initiatives that arguably further legitimize cryptocurrency and that may boost demand and prices for all currencies, including those referenced above. These policies include the following:

- The January 2025 Executive Order 14178, “Strengthening American Leadership in Digital Financial Technology.” E.O. 14178 stated that it is “the policy of [the] Administration to support the responsible growth and use of digital assets [and] blockchain technology,” including by “providing regulatory clarity and certainty built on technology-neutral regulations ... which are essential to supporting a

¹⁵⁶ Department of the Treasury, “The Financial Crimes Enforcement Network Proposes Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions,” press release, December 18, 2020, <https://home.treasury.gov/news/press-releases/sm1216>.

¹⁵⁷ These include \$WLFI (<https://worldlibertyfinancial.com/>), \$TRUMP (<https://gettrumpmemes.com/>), and USD1 (<https://worldlibertyfinancial.com/usd1>). A promotional dinner allegedly hosted for the top holders of President Trump’s \$TRUMP meme coin—and attended by Justin Sun, a crypto developer under investigation by the SEC—were described by some commentators as a “conflict of interest” or “selling access.” Regarding crypto’s role in President Trump’s and his family’s wealth, see, for example, David Uberti et al., “The Trump Family Business Empire Is Growing. We Mapped Out 268 Pieces of It,” *Wall Street Journal*, December 18, 2025, <https://www.wsj.com/politics/trump-family-business-visualized-6d132c71>; Joe Miller et al., “How the Trump Companies Made \$1Bn from Crypto,” *Financial Times*, October 16, 2025, <https://www.ft.com/content/2ea2b35b-e009-42ed-b4d3-6b21aa9b2a13>; David Yaffe-Bellany and Eric Lipton, “Hundreds Join Trump at ‘Exclusive’ Dinner, with Dreams of Crypto Fortunes in Mind,” *New York Times*, May 22, 2025, <https://www.nytimes.com/2025/05/22/us/politics/trump-memecoin-dinner.html>; and Stephen Fowler, “White House Denies Conflicts of Interest as Trump Joins Dinner for Meme Coin Investors,” NPR, May 22, 2025, <https://www.npr.org/2025/05/22/nx-s1-5407411/white-house-denies-conflicts-of-interest-as-trump-joins-dinner-for-meme-coin-investors>.

¹⁵⁸ For reporting regarding President Trump’s previous comments on Bitcoin, see Mary-Ann Russon, “Donald Trump Calls Bitcoin ‘a Scam Against the Dollar,’” BBC, June 7, 2021, <https://www.bbc.com/news/business-57392734>.

- vibrant and inclusive digital economy and innovation in digital assets, permissionless blockchains, and distributed ledger technologies.”¹⁵⁹
- E.O. 14178 includes a prohibition on CBDCs, which would be a competitor to stablecoins if a CBDC were ever to be created (public vs. private digital dollars).
 - The President issued another E.O. with the stated policy intention of establishing a Strategic Bitcoin Reserve, suggesting that it would be U.S. government policy to purchase and hold cryptocurrencies.¹⁶⁰

In addition, and as addressed above (see “Stakeholder Engagement”), federal agencies that implement policies have overseen a shift from the policies of the Biden Administration, broadly taking a more permissive position toward cryptocurrency.

These activities have led to assertions by some Members of Congress that President Trump’s reported involvement in crypto businesses, his role in implementing and enforcing laws, and his role in appointing leadership at agencies that have regulatory authority over the businesses represent a conflict of interest.¹⁶¹ Federal government officials and employees, when taking official action, are expected to place “loyalty to the Constitution, laws and ethical principles above private gain.”¹⁶² To prevent real and perceived financial conflicts of interest, federal law prohibits government employees from participating “personally and substantially” in any covered activity in which the employee or the employee’s spouse, minor child, general partner, or previous organization has a financial interest.¹⁶³ In 1978, Congress used this guiding principle to enact the Ethics in Government Act (EIGA), which created the current government ethics program to “preserve and promote the integrity of public officials and institutions.”¹⁶⁴ The EIGA, as amended, requires covered employees to file annual financial disclosure reports and periodic transaction reports after a covered financial transaction (e.g., sales and purchases of stocks, bonds, commodity futures, and other securities that exceeded \$1,000).¹⁶⁵

¹⁵⁹ See Section 1 in Executive Order 14178 of January 23, 2025, “Strengthening American Leadership in Digital Financial Technology,” 90 *Federal Register* 8647, January 31, 2025.

¹⁶⁰ Executive Order 14233 of March 6, 2025, “Establishment of the Strategic Bitcoin Reserve and United States Digital Asset Stockpile,” 90 *Federal Register* 11789, March 11, 2025. Since the issuance of Executive Orders 14178 and 14233, the President’s Working Group on Digital Asset Markets published its report *Strengthening American Leadership in Digital Financial Technology* at <https://www.whitehouse.gov/crypto/>. Executive Order 14178 established the working group and mandated the report. According to the report, “Treasury delivered considerations to the White House regarding the establishment and management of the Reserve and the Stockpile” and “will continue to coordinate with the White House” to operationalize the Strategic Bitcoin Reserve (p. 160). Executive Order 14233 effectively directed Treasury to relabel its current holdings from final forfeitures as the reserve, perform a formal accounting of all digital assets in each agency’s possession, and establish strategies for acquiring additional Bitcoin on budget-neutral terms.

¹⁶¹ U.S. Congress, House Committee on Financial Services (Democrats), “Waters, Warren Probe SEC on Trump Family’s Crypto Company and Possible Conflicts of Interest,” April 2, 2025, <https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=413207>.

¹⁶² 5 C.F.R. §2635.101(a).

¹⁶³ 18 U.S.C. §208. This section of code describes restrictions on certain government officials performing professional functions when they or a certain family member have a financial interest. For a further discussion of the history of financial conflict of interest laws, see U.S. Congress, House Committee on the Judiciary, *Bribery, Graft, and Conflicts of Interest* (1961), pp. 12-13; U.S. Congress, Senate Committee on the Judiciary, *Strengthening the Criminal Laws Relating to Bribery, Graft, and Conflicts of Interest, and for Other Purposes*, report to accompany H.R. 8140, 87th Cong., 2nd sess., September 29, 1962, S.Rept. 87-2213, pp. 13-14; and CRS Report R47320, *Financial Disclosure in the U.S. Government: Frequently Asked Questions*, by Jacob R. Straus.

¹⁶⁴ P.L. 95-521, 92 Stat. 1824 (1978); 5 U.S.C. §§13101-13111.

¹⁶⁵ 5 U.S.C. §13103; 5 C.F.R. §2634.201; and P.L. 112-105, §6(a). For more information, see footnote 21 in CRS Report R47320, *Financial Disclosure in the U.S. Government: Frequently Asked Questions*, by Jacob R. Straus.

Debate has transpired over whether various forms of cryptocurrency legislation should include provisions governing ownership and conflicts of interest for public officials.¹⁶⁶ In at least one instance, enacted legislation has provided guidance on the potential application of conflicts of interest and ethics to cryptocurrency. The GENIUS Act included a “Rule of Construction” that stated the following:

(i) ...—Nothing in this Act shall be construed—

...

(2) to limit or prevent the continued application of applicable ethics statutes and regulations administered by the Office of Government Ethics, or the ethics rules of the Senate and the House of Representatives, including section 208 of title 18, United States Code, and sections 2635.702 and 2635.802 of title 5, Code of Federal Regulations. For the avoidance of doubt, existing Office of Government Ethics laws and the ethics rules of the Senate and the House of Representatives prohibit any member of Congress or senior executive branch official from issuing a payment stablecoin during their time in public service. For the purposes of this paragraph, an employee described in section 202 of title 18, United States Code, shall be deemed an executive branch employee for purposes of complying with section 208 of that title.¹⁶⁷

During the debate over the GENIUS Act, some Members of Congress introduced amendments that would have explicitly prohibited a President, among others, from owning or promoting a payment stablecoin issuer in exchange for any value, but these amendments were not voted on.¹⁶⁸ Media outlets reported that some Senators wanted to include ethics provisions in the cryptocurrency market structure bill that was recently marked up by the Senate Banking Committee.¹⁶⁹ Two Senators who voted for the bill stated that they would not necessarily vote for the bill on a floor vote unless ethics and other provisions are added.¹⁷⁰ Some Senators have introduced legislation that would establish certain restrictions for the involvement of public officials, including Presidents, with cryptocurrencies.¹⁷¹ Should Congress wish to further legislate on the potential conflicts of interest presented by cryptocurrency, it may choose to include in other legislation (such as market structure legislation) provisions that are similar to the provisions included in the GENIUS Act. Even with the enactment of the GENIUS Act, the type of conflict of interest provided by ownership or promotion of a cryptocurrency is arguably unresolved. Common interpretations of the applicable conflicts of interest statute referenced in the GENIUS Act do not include blanket limitations on ownership of any asset or activity, including an implicit ban on operating a stablecoin. Also, because the statute cited in the GENIUS Act does not

¹⁶⁶ Brady Dale, “House Dems Pound on Trump Stablecoin During Bill Markup,” *Axios*, April 2, 2025, <https://www.axios.com/2025/04/02/trump-bitcoin-democrats-stable-act>; and Jasper Goodman, “Senate Banking Republicans Make ‘Closing Offer’ to Dems on Crypto Bill,” *Politico*, January 6, 2026, <https://www.politico.com/live-updates/2026/01/06/congress/senate-banking-crypto-bill-00712864>.

¹⁶⁷ P.L. 119-27.

¹⁶⁸ S.Amdt. 2349 to S. 1582.

¹⁶⁹ *Punchbowl News*, “Vault: Key Democrats Draw ‘Red Line’ on Crypto Ethics,” January 8, 2026, <https://punchbowl.news/article/finance/economy/senate-democrats-crypto-ethics/>; and Jasper Goodman, “Senate Ag Advances Crypto Bill Along Party Lines,” *Politico*, January 29, 2026, <https://www.politico.com/live-updates/2026/01/29/congress/senate-ag-advances-crypto-bill-00754586>.

¹⁷⁰ U.S. Congress, Senate Banking, Housing, and Urban Affairs Committee, *Executive Session (Markup) to consider H.R.3633, the Digital Asset Market Clarity Act of 2025*, 119th Cong., 2nd sess., May 14, 2026, <https://youtu.be/VyO6K2Yqvn8?t=5957>; and Mark Schoeff Jr., “Senate Banking approves crypto market structure bill,” *Roll Call*, May 15, 2026, <https://rollcall.com/2026/05/15/senate-banking-approves-crypto-market-structure-bill/>.

¹⁷¹ Sen. Ruben Gallego, “Gallego Backs Legislation to Prevent Corruption, Financial Exploitation by Public Officials,” press release, July 3, 2025, <https://www.gallego.senate.gov/news/press-releases/gallego-backs-legislation-to-prevent-corruption-financial-exploitation-by-public-officials/>.

explicitly ban such activities, it is not clear whether the act’s specific language—“[f]or the avoidance of doubt”—creates any new binding restrictions nor how courts might rule if the language were to be challenged. That conflict of interest statute (18 U.S.C. §208) generally applies to virtually all federal employees, including Members of Congress. Future legislation, if similar to the GENIUS Act, would likely not apply to a President based on interpretation of the GENIUS Act provision and 18 U.S.C. §208. Alternatively, Congress might choose to include provisions that more explicitly address the current President and limit the President’s participation in the industry. However, such proposals reportedly would not be acceptable to the current Administration.¹⁷²

Intersection with Traditional Finance

Until relatively recently, traditional finance has been somewhat isolated from the crypto industry. Futures began being traded on U.S. centralized derivatives exchanges around a decade ago, but remained limited relative to other markets until recently.¹⁷³ Banking involvement was mostly limited to providing traditional services to cryptocurrency exchanges and stablecoin arrangements, and providing custodial services. More recently, however, crypto finance has begun to become more integrated with the traditional finance system. In January 2024, the SEC approved cryptocurrency exchange-traded products.¹⁷⁴ The move allowed investors to gain exposure to cryptocurrency without having to own the assets outright, which likely increased the number of investors that might consider owning the asset. As a result, traditional financial institutions began offering products, making them key players in the industry. In addition, as previously referenced, bank offerings of crypto have increased and seem poised to grow further as regulatory attitudes have shifted.¹⁷⁵ Absent additional legislation, this trend could be reversed, as it has in years past, or it may not, given that certain things have changed. The GENIUS Act codified permission for banks to issue their own stablecoins and perform other activities, thereby strengthening certain linkages between industries. Market structure legislation being debated could further codify a more expansive role banks could play with (non-stablecoin) cryptocurrencies, including permitting them to operate exchanges.¹⁷⁶ Were Congress to pass market structure legislation, lending the industry a stamp of approval, growth may be expected along several vectors—greater participation by the public and greater offerings by traditional financial institutions.

As crypto becomes even more integrated with the traditional financial industry, many of the cryptocurrency policy issues addressed in this report will, at the same time, be imported into the traditional financial system and by traditional intermediaries. Traditional financial intermediaries must already contend with many policy issues similar to those introduced above, such as illicit finance, conflicts of interest, and so on—but the nature of risks may change. For example, banks face illicit finance risks just like cryptocurrency platforms do, but the nature of that risk may

¹⁷² Jesse Hamilton, “Trump’s White House Won’t Tolerate Attacks on the President in Crypto Bill, Adviser Says,” *CoinDesk*, February 3, 2026, <https://www.coindesk.com/policy/2026/02/03/trump-adviser-says-white-house-won-t-allow-crypto-bill-to-attack-president-on-ethics>.

¹⁷³ Rostin Behnam, “Keynote Address of Chairman Rostin Behnam at the Brookings Institution Webcast on the Future of Crypto Regulation,” CFTC, July 25, 2022, <https://www.cftc.gov/PressRoom/SpeechesTestimony/opabehnam24>.

¹⁷⁴ See CRS In Focus IF12573, *SEC Approves Bitcoin Exchange-Traded Products (ETPs)*, by Eva Su.

¹⁷⁵ Joshua Franklin, “JPMorgan Explores Lending Against Clients’ Crypto Holdings,” *Financial Times*, July 22, 2025, <https://www.ft.com/content/70279a78-6e48-49ec-a0c3-b091e9d87bc1>.

¹⁷⁶ Amendment in the Nature of Substitute to H.R. 3633, introduced by Senator Tim Scott, Senate Banking, Housing, and Urban Affairs Committee, May 12, 2026, §401(c)(2) and (g) would clarify that “facilitating customer purchases and sales of digital assets,” and “making loans collateralized by digital assets” are “part of, or incidental to, the business of banking,” as the term is used in 12 U.S.C. §24.

change if a bank, in its potential function as a stablecoin or exchange operator, were to begin interacting with unhosted wallets of which it cannot confirm the true owner. Banks also make collateralized loans; it is uncertain how their practices around such loans may shift if the loans are backed by cryptocurrencies, which can swing in value substantially in a given day. More importantly, the amount of risk introduced may grow. During the “cryptocurrency winter” in late 2022 into early 2023,¹⁷⁷ when markets fell more than 60%, broader financial risks were relatively limited because of limited interconnectivity. That was also the case amid the most recent cryptocurrency downturn in 2026. It is unclear whether this will continue to be the case if linkages continue to grow. As linkages and exposure to the cryptocurrency industry grow, how traditional intermediaries adapt will likely be a key policy issue. Whether—or how—traditional forms of risk identification and mitigation work in light of this shift, or whether new techniques are developed to account for new potential risks, may also be relevant.

Concluding Observations

In recent years, the cryptocurrency industry and its attendant regulatory policy issues have undergone near-constant transformation. This transformation has included a crypto winter from late-2022 and much of 2023, followed by the attainment of new market highs—albeit temporarily—and renewed policy relevance. This transformation has grabbed the attention of many in traditional finance who have a stake in the industry, as well as retail investors and policymakers. Policymakers have recently focused on a legislative agenda, which, if implemented, may see the industry achieve greater legitimacy and some amount of statutory permanence. However, whether related stablecoin legislation passed in July 2025 is an indication of market structure legislation to come or a legislative conclusion policymakers do not revisit remains to be seen.

Recent market practices and regulatory shifts have mostly eliminated what some commentators have called earlier attempts to thwart the cryptocurrency industry. It is possible that the recent rules and guidance, and a greater openness to the industry, will ease pressure on the need for legislation and the need to find legislative consensus. However, even regulatory action, and greater agreement and clearer jurisdictional boundaries among regulatory agencies, does not seem to solve the perceived gap of authority to regulate spot markets. Stakeholders must presume the regulatory pendulum may swing back again. Greater certainty demanded by industry or policymakers is thus more likely to be achieved through legislation.

Whether the current favorable regulatory and political disposition toward the crypto industry will translate to legislation with more durable consequences will depend on whether Congress agrees on an array of policy issues. There has been broad congressional coalescence around certain perennial policy issues, such as the roles for key regulators in a prospective regulatory framework. However, newer policy issues such as ethics concerns, managing interindustry disputes between new entrants and industry mainstays, regulating defi, and managing greater integration with traditional finance—some of which issues are a result of crypto-related legislation that has been enacted and the crypto industry’s successes—are the current focus of legislative efforts and may be integral to the industry outlook.

¹⁷⁷ “Crypto winter” is the term used when assets experience sharp and prolonged drops in value.

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