

President Biden Signs Executive Order Outlining Federal Government's Approach to Digital Assets

March 16, 2022

On March 9, 2022, President Joe Biden signed Executive Order (EO) #14067, [Ensuring Responsible Development of Digital Assets](#), a long-awaited regulatory roadmap for executive branch agencies. In the EO, Biden directs relevant federal agencies, through an interagency process and under the coordination of the Assistant to the President for National Security Affairs, Jake Sullivan, to collaborate, prepare reports/studies and consider a host of issues in the digital assets¹ space.

While the EO directs agencies to collaborate and analyze aspects of the digital asset environment, it does not direct policy. For example, its focus on Central Bank Digital Currencies (CBDC) begins by directing an analysis of whether the Federal Reserve even has the legal authority to issue a CBDC and then requires the development of legislation that would presumably authorize its creation. Still, while the EO does not deliver any new policy, it does provide a rather clear indication of the macro-level view of digital assets within the administration. The fact that the interagency process will be coordinated through National Security Agency (NSA) suggests that the growth of digital assets is viewed more as a threat than an opportunity. The focus on digital assets and their impact on consumer protection, financial risk and illicit activity seems to outweigh any focus on the promise of developments and innovation in the digital asset space. The EO's heavy focus on a CBDC is consistent with an administration committed to addressing the concerns raised by non-public digital assets. So while we will have to wait for the result of these working groups, the EO does provide a clear indication of where the administration's mind is when it comes to digital currencies.

Relevant Agencies and Actors

The interagency process includes the following individuals and agencies: The Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Labor, the Secretary of Energy, the Secretary of Homeland Security, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the Director of National Intelligence, the Director of the Domestic Policy Council, the Chair of the Council of Economic Advisers, the Director of the Office of Science and Technology Policy, the Administrator of the Office of Information and Regulatory Affairs, the

Contact Information

If you have any questions concerning this alert, please contact:

Brendan M. Dunn

Partner

mbdunn@akingump.com

Washington, D.C.

+1 202.887.4230

Zachary M. Rudisill

Partner

zrudisill@akingump.com

Washington, D.C.

+1 202.887.4225

Eric C. Ettorre

Policy Advisor

eettorre@akingump.com

Washington, D.C.

+1 202.887.4235

Kyle Perel

Public Policy Specialist

kperel@akingump.com

Washington, D.C.

+1 202.887.4510

Director of the National Science Foundation and the Administrator of the United States Agency for International Development.

Representatives from other executive departments and agencies include representatives of the Board of Governors of the Federal Reserve System (FRS), the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC) and other Federal regulatory agencies.

Key Issue Areas and Directives:

The Executive Order focuses on six key issue areas: (1) consumer and investor protection; (2) financial stability; (3) illicit activity; (4) U.S. competitiveness on a global stage; (5) financial inclusion; and (6) responsible innovation.

1. Consumer and Investor Protection

- Within 180 days, the EO directs the Treasury Department, with the Secretary of Labor and heads of the independent regulatory agencies such as the FTC, SEC, CFTC, Federal banking agencies and the CFPB to submit reports on the implications of developments and adoption of digital assets and changes in financial market and payment system infrastructures for U.S. consumers, investors, businesses and for equitable economic growth. The report shall address the conditions that would drive mass adoption of different types of digital assets, including the associated risks and opportunities for U.S. consumers, investors and businesses. The report will also detail potential regulatory and legislative actions.
- Within 180 days, the Director of the Office of Science and Technology Policy and the Chief Technology Officer of the U.S., in consultation with the Secretary of the Treasury, the Chairman of the Federal Reserve and the heads of other relevant agencies, shall submit a technical evaluation of the technological infrastructure, capacity and expertise that would be necessary to facilitate and support the introduction of a CBDC system.
- Within 180 days, the Attorney General, in consultation with the Secretary of the Treasury and the Secretary of Homeland Security, shall submit a report on the role of law enforcement agencies in detecting, investigating and prosecuting criminal activity related to digital assets.
- The EO encourages relevant agencies to consider and assess the impact of the digital assets within their areas of jurisdiction and expertise. For example, the Chair of the SEC, the Chairman of the CFTC, the Chairman of the Federal Reserve, the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation and the Comptroller of the Currency are each encouraged to consider the extent to which investor and market protection measures may be used to address the risks of digital assets.

2. Financial Stability

- Within 210 days, the Secretary of the Treasury should convene the Financial Stability Oversight Council (FSOC) and produce a report outlining the specific financial stability risks and regulatory gaps posed by various types of digital assets and providing recommendations to address such risks.

3. Illicit Finance

- The Secretary of the Treasury, in coordination with the Secretary of State, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of National Intelligence and the heads of other relevant agencies may submit two reports to the Congress of the National Strategy for Combating Terrorist and Other Illicit Financing. Within 90 days, they may submit supplemental annexes with additional views on illicit finance risks posed by digital assets, including cryptocurrencies, stablecoins, CBDCs and trends in the use of digital assets by illicit actors. Within 120 days, the agencies are directed to develop a coordinated action plan based on the Strategy's conclusions for mitigating the digital asset-related illicit finance and national security risks addressed in the updated strategy.

4. Fostering International Cooperation and US Competitiveness

- Within 120 days, the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Commerce, the Administrator of the United States Agency for International Development and the heads of other relevant agencies shall establish a framework for interagency international engagement with foreign counterparts as appropriate to adapt, update and enhance adoption of global principles and standards for how digital assets are used and transacted, and promote the development of digital asset and CBDC technologies consistent with the U.S. values and legal requirements.
- Within one year of the framework's establishment, the Secretary of the Treasury, in coordination with the Secretary of State, the Secretary of Commerce, the Director of the Office of Management and Budget, the Administrator of the United States Agency for International Development and the heads of other relevant agencies should submit a report to the President on priority actions taken under the framework and its effectiveness.
- Within 180 days, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury and the heads of other relevant agencies, shall establish a framework for enhancing U.S. economic competitiveness in digital asset technologies.
- Within 90 days, the Attorney General, in coordination with the Secretary of State, the Secretary of the Treasury and the Secretary of Homeland Security, should submit a report on how to strengthen international law enforcement cooperation for detecting, investigating and prosecuting criminal activity related to digital assets.

5. Financial Inclusion

- As a part of the commissioned report from the Secretary of Treasury on the mass adoption of digital assets (detailed under *Consumer and Investor Protection*), part of the report will analyze digital assets' impact on equitable economic growth and focus on how technological innovation may affect these efforts specifically relating to the most vulnerable to disparate impacts.

6. Responsible Innovation

- Within 180 days, the Director of the Office of Science and Technology Policy, in coordination with the Secretary of the Treasury, the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Chair of the Council of Economic Advisers, the Assistant to the President and National Climate Advisor

and the heads of other relevant agencies, shall submit a report on the connections between distributed ledger technology and short-, medium- and long-term economic and energy transition impacts.

The US Central Bank Digital Currency:

Beyond (and intertwined within) the six pillars laying the foundation for the federal government's approach to digital assets, the Executive Order also calls for the continued exploration of a U.S. Central Bank Digital Currency, in light of the Federal Reserve's recent CBDC [analysis](#).

Within 180 days, the EO directs the Secretary of the Treasury, coordinating with the Secretary of State, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of National Intelligence and the heads of other relevant agencies to submit to the President a report on the future of money and payment systems, including:

- the conditions that drive broad adoption of digital assets;
- the extent to which technological innovation may influence these outcomes; and,
- the implications for the U.S. financial system, the modernization of and changes to payment systems, economic growth, financial inclusion and national security.

The EO directs the Federal Reserve to continue its research on a potential U.S. CBDC, and furthermore, to develop a plan to incorporate the broader Federal Government in support of a potential U.S. CBDC.

Moreover, within 180 days, the Attorney General, in coordination with the Secretary of the Treasury and the Chairman of the Federal Reserve, is directed to provide an assessment of whether legislative changes would be necessary to issue a U.S. CBDC. Furthermore, within 210 days of the date of this order, the Attorney General should provide a corresponding legislative proposal, based on consideration of the CBDC report submitted by the Secretary of the Treasury and the findings of the Chairman of the Federal Reserve.

¹ The EO defines the term "digital assets" broadly. Digital Assets "refers to all CBDCs, regardless of the technology used, and to other representations of value, financial assets and instruments, or claims that are used to make payments or investments, or to transmit or exchange funds or the equivalent thereof, that are issued or represented in digital form through the use of distributed ledger technology." Moreover, the definition does not limit digital assets to a particular legal category or method of exchange