

Cryptocurrency Congressional Activity Watch

February 11, 2022

As the 117th Congress moves into 2022, cryptocurrency and digital assets will continue to be an area of intense focus and discussion for both Democrats and Republicans. Member interest continues to grow in this space, with the number of bills and hearings related to **blockchain technology**, **crypto regulation**, **stablecoins** and **central bank digital currency** growing weekly. In addition to general bipartisan concerns about any new regulations that would stifle innovation in this space, Congress has been particularly focused as of late on issues surrounding cryptocurrency transaction reporting and cryptocurrency mining. On top of the aforementioned congressional activity on these issues, provisions in the recently released **America COMPETES Act** related to digital assets have sparked debate on both sides of the aisle.

Tax – Cryptocurrency Reporting

As the Senate developed its landmark Bipartisan Infrastructure Legislation throughout the spring and summer of 2021, efforts to pay for new infrastructure investments led members to look at tax administration and digital assets. Language regarding “brokers” and digital asset reporting was ultimately included by the Senate in the Infrastructure Investment and Jobs Act (IIJA) and eventually enacted into law P.L. No. 117-58). Section 80603 of the law—*Information Reporting for Brokers and Digital Assets*—defined a broker as “any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.” Congressional crypto-advocates on both sides of the aisle and in both chambers have expressed concern over the breadth of the definition, arguing that it could potentially capture customers, miners, hardware/software providers and others in the crypto-ecosystem who do not have the information that they would be required by law to furnish to the Internal Revenue Service (IRS). Legislation has already been introduced to address these perceived shortcomings. Although the tax treatment and reporting obligations regarding virtual currency have been a part of both the Treasury’s and the IRS’s priority guidance plan since **2019**, forthcoming guidance on the definition of “broker” could have major ramifications across the crypto-landscape and is being closely watched on both sides of the aisle.

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Senate

On December 14, 2021, Sens. Rob Portman (R-OH) and Mark Warner (D-VA) led a bipartisan letter to Treasury Secretary Janet Yellen urging her to define the term “broker” as passed in the IIJA through “rulemaking under the Administrative Procedure Act (APA) in an expeditious manner.” The letter further urged the Treasury, “because of the need for certainty and the time required for rulemaking under the APA... [to] provide information or informal guidance as soon as possible” on the definition of broker. The lawmakers also made clear that they were “prepared to offer legislation to further clarify” the intent of the definition. Joining Sens. Portman and Warner on the letter were Sens. Mike Crapo (R-ID), Kyrsten Sinema (D-AZ), Pat Toomey (R-PA) and Cynthia Lummis (R-WY). Prior to this letter, on November 15, 2021, Sen. Ted Cruz (R-TX) introduced a bill, S. 3206, to repeal the crypto-related provisions from IIJA. In a similar vein three days later, Senate Finance Committee Chair Ron Wyden (D-OR) along with Sen. Lummis introduced legislation to revise the rules of construction applicable to information reporting requirements imposed on brokers with respect to digital assets (S. 3249). The Senator’s bill would clarify that the “broker” definition excludes miners as well as wallet providers and developers, and would ensure that only those digital asset intermediaries that actually have access to material customer information are required to report to the IRS.

House

In the House of Representatives, one piece of legislation that has notably gained bipartisan support is Rep. Patrick McHenry’s (R-NC) Keep Innovation in America Act (H.R. 6006). In response to the confusion stemming from the provisions in the IIJA, “this bill would expand the definition of a broker, for purposes of tax information reporting, to include any person who (for consideration) stands ready in the ordinary course of a trade or business to effect sales of digital assets at the direction of their customers. It also provides for reporting requirements for digital assets (i.e., any digital representation of value that is recorded on a cryptographically secured distributed ledger).” Furthermore, the bill requires the Treasury Secretary to conduct a study and provide a report to Congress on the treatment of digital assets as cash for purposes of reporting requirements for cash payments of more than \$10,000. Introduced on November 17, 2021, the bill has gained support from across the aisle with a total of 17 cosponsors (twelve Republicans and five Democrats). More recently, on January 27, 2022, Reps. McHenry and Tim Ryan (D-OH), along with nine other lawmakers, urged Treasury Secretary Janet Yellen to set a narrow lens when determining what digital asset businesses will be subject to new IRS reporting rules. In the letter, the lawmakers hone in on the provision in the IIJA that requires brokers who facilitate digital asset transfers to report activity for tax purposes asking “her to provide additional clarity to America’s innovators and entrepreneurs.” The bipartisan letter was also signed by the original cosponsors of H.R. 6006: Reps. Kevin Brady (R-TX), Ted Budd (R-NC), Warren Davidson (R-OH), Tom Emmer (R-MN), Anthony Gonzalez (R-OH), French Hill (R-AR), Ro Khanna (D-CA), Eric Swalwell (D-CA) and Darren Soto (D-FL).

Energy/Environment – Cryptocurrency Mining

House

In addition to the ongoing crypto-reporting fight stemming from the IIJA's passage, the House Energy and Commerce Subcommittee on Oversight and Investigations recently held a first-of-its-kind **hearing** on the energy/environmental impact of crypto-mining. Democrats **pressed** Bitcoin mining companies to reduce their reliance on electricity generated by fossil fuels, with even crypto-friendly lawmakers warning that the shift would be critical to the industry's future. The hearing made clear that crypto's climate policy will be of increased focus for lawmakers as they look to address the ever-evolving digital asset landscape. While Democrats focused on concerns over higher electric bills and climate change, Republicans took the opportunity to warn against overly-burdensome regulation that could stifle industry innovation. Industry representatives testifying insisted they are "a force for good," highlighting "that their energy needs could spur investment in wind and solar power projects and provide much-needed demand for energy that would have gone to waste."

Senate

On January 20, 2022, following the House Energy and Commerce Subcommittee hearing, Sen. Elizabeth Warren (D-MA) led bicameral **letters** to several of the largest domestic cryptocurrency miners (Riot Blockchain, Marathon Digital Holdings, Stronghold Digital Mining, Bitdeer, Bitfury and Bit Digital) demanding more information about their power consumption and environmental impact. The signatories include Sens. Sheldon Whitehouse (D-RI), Jeff Merkley (D-OR), Maggie Hassan (D-NH) and Ed Markey (D-MA), as well as Reps. Katie Porter (D-CA), Rashida Tlaib (D-MI) and Jared Huffman (D-CA).

Financial Services – China Legislation

Most recently in the House, Rep. Jim Himes (D-CT) drafted a provision for the America COMPETES Act that would have expanded the Treasury's authority to monitor and freeze accounts at financial institutions. The provision was intended to address the use of digital assets in ransomware attacks, money laundering and other illegal activities. However, after receiving pushback from industry leaders, Rep. Himes proposed that the House narrow the financial crimes provision. The proposed change would have directed the Treasury to take public comment as it implements the measure. Critics argued that the provision would give the Treasury unfettered power to stop transactions and ultimately jeopardize privacy. Not only did Rep. Himes' provision receive resistance from industry, but members of Congress also attempted to counter his efforts. Leading up to the House's consideration of the America COMPETES Act, Reps. Ted Budd (R-NC), Nancy Mace (R-SC) and Ro Khanna (D-CA) all filed amendments to chip away at the provision. Before the bill's eventual passage, lawmakers agreed to remove the section.

What To Watch For

We expect an Executive Order to be released by the White House later this month coordinating the crypto agenda across the executive branch. **According** to people familiar with the issue, "senior administration officials have held multiple meetings on the plan, which is being drafted as an executive order." The executive order reportedly details economic, regulatory and national security challenges posed by

cryptocurrencies and would call for reports from various agencies due in the second half of 2022. A key report is expected to come from the Financial Stability Oversight Council (FSOC), whose ongoing role is to monitor risks to the U.S. financial system. Another critical report is expected to examine the risks posed by the use of cryptocurrencies to facilitate various illegal activities. Additionally, the Executive Order is expected to assign specific roles to a broad spectrum of federal departments and agencies in developing a comprehensive U.S. digital asset strategy. These departments and agencies range from the U.S. Department of State to the U.S. Department of Commerce. It appears that the Biden administration's general posture remains one of crypto-skepticism, at the same time that a bipartisan consensus is emerging in Congress to maintain a light-touch regulatory approach to the industry.

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