

Executive Order Directs Development of National Policy on Digital Assets

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On March 9, 2022, President Biden issued the highly-anticipated *Executive Order on Ensuring Responsible Development of Digital Assets* (“Executive Order”). The Executive Order is in response to the significant growth and development of digital assets, which the Administration notes “necessitate an evolution and alignment” of the United States’ approach to digital assets. Although the Executive Order does not explicitly reference benefit plans, it contemplates a role for the Secretary of Labor in the regulation of digital assets.

The Executive Order provides a framework for the development of a national policy on digital assets, and outlines the Biden Administration’s key policy objectives and priorities. Notably, “digital asset” is defined broadly to include cryptocurrencies and “other representations of value, financial assets and instruments, or claims that are used to make payments or investments” that are “issued or represented in digital form” using distributed ledger technology.

The Administration has noted that the Executive Order “signals the beginning, not the conclusion” of its efforts regarding digital assets. In this regard, the Executive Order directs various federal agencies to further evaluate and provide recommendations to the President on different aspects of the policy framework, which may lead to more specific legal and/or regulatory developments in this evolving space.

I. Overview of Key Policy Objectives

The Executive Order describes six key policy objectives:

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- Protection of Consumers, Investors, and Businesses. The Executive Order seeks to establish safeguards to protect consumers, investors, and businesses from financial, cybersecurity, privacy, and other risks. The Executive Order explains the need for these safeguards by stating that “[i]n the absence of sufficient oversight and standards, firms providing digital asset services may provide inadequate protections for sensitive financial data, custodial and other arrangements relating to customer assets and funds, or disclosures of risks associated with investment.”
- U.S. and Global Financial Stability. The Executive Order seeks to address broader economic and financial system stability risks that may arise because digital asset trading platforms and service providers “may not be subject to or in compliance with appropriate regulations or supervision.” The Executive Order notes that under the principle of “same business, same risks, same rules,” digital asset issuers, exchanges, trading platforms, and other intermediaries “should, as appropriate, be subject to and in compliance with regulatory and supervisory standards that govern traditional market infrastructures and financial firms.” The Executive Order does not explain how digital trading platforms and service providers are out of compliance with existing regulations.
- Use of Digital Assets in Illicit Financial Activities. The Executive Order seeks to address the use of digital assets in various illicit financial activities (e.g., money laundering, cybercrime, terrorism financing), as well as the suspected use of digital assets to circumvent international sanctions. The Executive Order notes that it is in the national interest to mitigate “illicit finance and national security risks through regulation, oversight, law enforcement action, or use of other United States Government authorities.”
- Central Role of U.S. in Global Financial System. The Executive Order seeks to maintain “the central role that the United States dollar and United States financial institutions and markets play in the global financial system,” and notes that “[c]ontinued United States leadership in the global financial system will sustain United States financial power and promote United States economic interests.”
- Access to Safe and Affordable Financial Services. The Executive Order seeks to ensure equitable access to financial services (e.g., cross-border funds transfers), with a particular focus on “those Americans underserved by the traditional banking system.”
- Development of Digital Assets. The Executive Order seeks to secure a role for the federal government in the development of digital assets and digital payment systems. The Executive Order notes a national interest in ensuring that such technologies “are developed, designed, and implemented in a responsible manner that includes privacy and security in their architecture, integrates features and controls that defend against illicit exploitation, and reduces negative climate impacts and environmental pollution, as may result from some cryptocurrency mining.”



II. Development of United States Central Bank Digital Currency

Beyond the broader digital asset policy objectives noted above, an entire section of the Executive Order outlines the consideration and potential development of a United States Central Bank Digital Currency (“CBDC”). The Executive Order notes that because “[s]overeign money is at the core of a well-functioning financial system,” the Administration “places the highest urgency on research and development efforts into the potential design and deployment options of a United States CBDC.”

In echoing views recently voiced by the Federal Reserve, the Executive Order seeks to “support the continued centrality of the United States within the international financial system, and help to protect the unique role that the dollar plays in global finance.” In this regard, the Executive Order responds to concerns that the introduction of central bank virtual currencies in other countries may threaten the U.S. dollar’s long-standing “reserve currency” status, which economists and others have noted has provided numerous benefits and protections for U.S. consumers (e.g., increased buying power), and U.S. fiscal policy more generally.

III. Implications for Benefits Space

While the Executive Order does not address the challenges facing the benefits space today, its issuance suggests that significant changes to the regulatory and legal landscape may take place in the not so distant future. Notably, the Executive Order seeks a broad intra-agency effort to develop digital asset policy, which includes the involvement of the Department of Labor, Department of the Treasury, and the Securities and Exchange Commission. Given the expected involvement of these agencies, which each have a role in regulating the benefits space, and public statements from Department of Labor officials that guidance in this area is forthcoming, it is important to remain engaged as the regulatory and legal landscape continues to develop.

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