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Biden Signs Executive Order on Cryptocurrency

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On March 9, President Biden signed an Executive Order (the Order) to establish the first comprehensive federal digital asset strategy for the U.S., which would promote digital asset innovation while balancing benefits and associated risks. The order directs the Justice Department, U.S. Department of the Treasury, the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau (CFPB), and many other federal agencies to study the legal and economic implications of creating a U.S. Central Bank Digital Currency (CBDC).

President Biden's order sets deadlines for a series of reports on "the future of money," the role that cryptocurrencies will play in a global economy, and information on a possible CBDC.

The objectives of the Order are as follows:

- Protecting consumers, investors, and businesses from financial risks by implementing sufficient oversight and standards;
- Mitigating systematic risk by regulating digital asset issuers, exchanges, trading platforms, and intermediaries;
- Reducing illicit financial and national security risks posed by misuse of digital assets;
- Reinforcing U.S. leadership in the global financial system and in technological and economic competitiveness;
- Promoting access to safe and affordable financial services; and
- Ensuring that digital asset technologies and payments are implemented in a responsible manner with requisite privacy and security measures that defend against illegal activities, and reduce negative climate impacts and environmental pollution, as may result from some cryptocurrency mining.

Within 180 days, Secretary of the Treasury Janet Yellen, in consultation with the heads of other agencies, must "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 United States financial system, the modernization of and changes to payment systems, economic growth, financial inclusion, and national security."

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Within 210 days of the Order, Secretary Yellen and the Financial Stability Oversight Council (FSOC), must provide a report detailing "specific financial stability risks and regulatory gaps" from the use of digital currencies, in addition to any recommendations to mitigate those risks. Secretary Yellen also issued (but then removed) a press release stating that President Biden's "approach will support responsible innovation that could result in substantial benefits for the nation, consumers, and businesses. It will also address risks related to illicit finance, protecting consumers and investors, and preventing threats to the financial system and broader economy. Under the executive order, Treasury will partner with interagency colleagues to produce a report on the future of money and payment systems … And, because the questions raised by digital assets often have important cross-border dimensions, we'll work with our international partners to promote robust standards and a level playing field."

The Order "encourage[s]" the chairman of the Board of Governors of the Federal Reserve System "to continue to research and report on the extent to which CBDCs could improve the efficiency and reduce the costs of existing and future payments systems, to continue to assess the optimal form of a United States CBDC," and to develop a plan for the potential implementation of a CBDC.

The Attorney General is required to submit a report within 180 days on whether legislative changes would be necessary to create a CBDC. President Biden also tasked the Attorney General with preparing "a report on the role of law enforcement agencies in detecting, investigating, and prosecuting criminal activity related to digital assets."

The Order also calls for research into the technology necessary to introduce a CBDC. Research must also be conducted on the impact of digital assets and technologies on the environment.

Within 120 days of the date of the Order, Secretary Yellen must "establish a framework for interagency international engagement with foreign counterparts … to … enhance adoption of global principles and standards for how digital assets are used and transacted, and to promote development of digital asset and CBDC technologies consistent with our values and legal requirements." The Order also calls for the establishment of a framework for enhancing U.S. economic competitiveness in, and leveraging of, digital asset technologies and a report on strengthening cooperation of international law enforcement for criminal activity related to digital assets.

Within 90 days of submission to Congress of the National Strategy for Combating Terrorist and Other Illicit Financing, a variety of groups may submit reports detailing the potential for illicit financial risks with digital assets.

In response to the Order, CFPB Director Rohit Chopra commented that "[t]oday's Executive Order recognizes that the dramatic growth in digital asset markets has created profound implications for financial stability, consumer protection, national security, and energy demand. The Consumer Financial Protection Bureau is committed to working to promote competition and innovation, while also reducing the risks that digital assets could pose to our safety and security. We must make sure Americans in all financial markets are protected against errors, theft, or fraud."

Our Take. President Biden is showing interest in creating a CBDC and is requesting reports regarding the varying potential implications of doing so. With the U.S. as a leader in digital payments, President Biden is requesting information on the possible risks inherent to digital assets, along with ways in which the U.S. can coordinate with other countries to assimilate legal requirements. The SEC has been active in bringing enforcement actions

involving cryptocurrencies and tokens. Monitoring developments under this executive order will be important to ascertaining if they will result in restraints on the SEC in this area. The Order is a significant step in acknowledging that cryptocurrencies are not merely a topic of the future and are instead here to stay.

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