CLIENT ALERTS & INSIGHTS

New Executive Order Lays Out National Policy Framework for Digital Assets and Cryptocurrencies

APRIL 7, 2022

The Executive Order calls for exploring a U.S. Central Bank Digital Currency and regulatory measures that protect consumers, businesses, and global financial stability.

On March 9, 2022, President Biden signed a sweeping Executive Order titled "Ensuring Responsible Development of Digital Assets" (the "**Executive Order**"). The Executive Order gets the ball rolling on federal research of digital assets and cryptocurrencies, as well as a future regulatory framework. However, it is important to note that the Executive Order does not implement any specific new policies, regulations, or restrictions.

The Executive Order calls for the federal government, and numerous agencies to coordinate and begin to developing a national regulatory framework for digital assets and cryptocurrencies.

That framework will be guided around six main principles, including the protection of consumers, businesses, and global financial stability. Importantly, the Executive Order calls for a number of studies (with various deadlines stated within the Executive Order) looking into the various risks and benefits of digital assets and cryptocurrencies.

Specifically, the Executive Order calls for federal agencies to coordinate research into the development of U.S. Central Bank Digital Currencies ("**CBDCs**"). The Federal Reserve, Treasury Department, Department of Justice, Department of Homeland Security, and Office of Management and Budget, among others, will all research the impacts that digital assets and the general modernization of payment systems will have on the U.S. and global financial system.

While no concrete rule or regulations are set forth in the Executive Order, this represents a big first step forward for the federal government into the digital asset and cryptocurrency world. Another recent federal government related to digital assets and cryptocurrencies came from the passage of the Infrastructure Investment and Jobs Act and its reporting requirements related to cryptocurrency investments.

Entities that are considering entering, or are already involved in, the digital asset or cryptocurrency arena should pay close attention to the results of the federal agency-directed studies, and what subsequent actions are taken. Additionally, such entities should prepare for a regulatory framework that is centered around the six principles laid out in the Executive Order.

Further analysis of the Executive Order is below.

Key Definitions

With the break-neck speed that digital asset and cryptocurrency systems have developed at, terms often get thrown about without consistent meanings. The Executive Order sets new federal government level definitions for common terms. These terms and definitions will likely be the starting point for any future regulation.

"Blockchain" is defined as distributed ledger technologies where data is shared across a network that creates a digital ledger of verified transactions or information among network participants. According to the Executive Order's definition, such data is typically linked using cryptography (e.g., secure communication) to maintain the integrity of the ledger and to facilitate things like transferring ownership or value of a digital asset.

"Cryptocurrency" is defined as a category of digital asset through which generation or ownership records are supported through a distributed ledger technology that relies on cryptography, such as a blockchain. There is also a sub-category of cryptocurrency called "stablecoin" defined as cryptocurrencies with mechanisms that are aimed at maintaining a stable value, such as by aligning the value of the cryptocurrency to a specific currency or asset, or by using algorithms to control the supply in response to changes in demand.

"Digital assets" is broadly defined to include any, regardless of the technology used, cryptocurrency, stablecoin, or a CBDC. Additionally, digital assets can be a commodity, derivative, or other financial product.

Guiding Principles

The Executive Order and its accompanying fact sheet set forth six guiding principles that federal agencies will use to develop a national digital asset and cryptocurrency regulatory framework. At a high level, those principles include: (1) protecting U.S. consumers, investors, and businesses; (2) protecting U.S. and global financial stability; (3) mitigating illicit financial activity and national security risks; (4) promoting U.S. leadership and competitiveness; (5) promoting equitable and fair access to financial systems; and (6) supporting responsible technological advancements and development.

1. Protection of U.S. Consumers, Investors, and Businesses

First, the Executive Order directs government agencies to assess and develop policy recommendations. Those recommendations are to address the growing area of digital assets and cryptocurrencies, its implications, as well as the changes the digital asset market has wrought on financial markets.

Additionally, the Executive Order directs federal regulators to put in place policies and procedures that ensure proper regulatory oversight. That oversight is meant to safeguard consumers, investors, and business's alike against the financial risks posed by digital assets and cryptocurrencies.

2. Financial Stability

Second, the Executive Order seeks to mitigate the negative effects that digital assets and cryptocurrencies could have on financial markets at both the national and the international level. Specifically, the Executive Order points to the Financial Stability Oversight Council as the federal regulator tasked with identifying and mitigating "economy-wide" risks. Under the Executive Order,

the Financial Stability Oversight Council is directed to develop recommendations to address any gaps in existing regulations that should be filled to properly mitigate such risks.

3. Illicit Finance and National Security Risks

Third, the Executive Order seeks to address concerns around illicit financial activity and national security, beyond merely mitigating against the purely personal financial risks. Under the Executive Order, a number of federal agencies are required to coordinate and communicate recommendations to mitigate national security risks and combat illegal financial activity. Those same agencies are also directed to work with international partners to ensure there are international frameworks in place and that U.S. allies are aware of, and responsive to, the applicable risks.

4. Leadership in Technology and Competitiveness

Fourth, in order to promote the U.S. in leading on technological and economic competitiveness, the Executive Order taps the Department of Commerce to lead the development of a digital assets and cryptocurrencies competitiveness policy.

That policy will focus on building a general foundation that other federal agencies can then use and integrate into their own policies, research, and development as it relates to digital assets and cryptocurrencies. Generally, the Executive Order highlighted the importance of U.S. leadership in not just digital assets and cryptocurrencies, but in continued leadership in the global financial market.

5. Equitable Access to Financial Systems

Fifth, the Executive Order states that development safe, affordable, and accessible financial services are an urgent national interest; specifically noting the negative impacts past financial policies have had on underserved communities. According to the Executive Order, those past negative effects on underserved communities will be taken into account as the federal government develops a digital asset and cryptocurrency policy and regulatory framework.

Here, the Secretary of the Treasury is appointed under the Executive Order to lead the production of a report on future financial systems and the implications those developments will possibly have on economic growth and financial inclusion.

6. Responsible Technological Advances and Development

Finally, the Executive Order directs the entirety of the U.S. federal government to “take concrete steps” in studying and supporting all technological advances. Those steps should focus on responsible development of new and emerging financial systems and services, keeping in mind certain priorities such as privacy, security, combating illicit exploitation, and possible negative climate impacts.

U.S. Central Bank Digital Currency

One of the biggest items to come out of the Executive Order is the fact that the federal government is exploring the implementation of CBDCs.

Specifically, the Executive Order directs the Federal Reserve to research, and, possibly to implement such CBDCs. Under the Executive Order, the research will include looking into the necessary technological infrastructure and capacity needed for any possible CBDC. Such research will also

keep in mind national security risks, consumer protection, equitable access, and the other principles listed above. The Executive Order also opens the door to the U.S. cooperating with international partners around the world in experimenting, developing, and promoting the use of any future CBDCs.

Additionally, the Secretary of the Treasury is tasked with determining whether congressional action is necessary in order to grant the Federal Reserve the ability to implement such CBDCs.

As the federal government begins to develop a policy and regulatory framework surrounding digital assets and cryptocurrencies, the Benesch Data Protection and Privacy team is committed to staying at the forefront of knowledge and experience to assist our clients in compliance efforts. We are available to assist you with any compliance needs.

Lucas Schaetzel at lschaetzel@beneschlaw.com or 312.212.4977.