JUN 13

Jenna McNamee

Senate crypto bill defines and delegates digital asset rules—sort of

Article

The news: A bipartisan crypto bill attempted to introduce some much-needed clarity regarding how cryptos would be regulated, per TechCrunch—but not everyone's satisfied.

What's in it? The proposed **Responsible Financial Innovation Act** defines different cryptocurrencies and states which US agencies have authority over the asset class.

Copyright © 2022, Insider Intelligence Inc. All rights reserved.

- It identifies most crypto assets as “ancillary” commodities—intangible, fungible assets that are usually offered or sold in conjunction with a purchase or sale of a security.
- Few cryptos, if any, would be considered securities—something issued by a corporation to build capital, that pays dividends, and represents ownership in the company.
- The **US Commodity Futures Trading Commission** (CFTC) would have exclusive jurisdiction over cryptocurrencies defined as commodities.
- The **Securities and Exchange Commission** (SEC) and CFTC would be the main digital asset watchdogs.
- Stablecoins require 1:1 monetary currency backing with a 100% reserve. Stablecoin issuers would face detailed disclosure requirements.
- Crypto transactions valued at **$200 or less** would be tax-free.

It will be hard to pass such a large bill into legislation as a whole, so it will likely be broken up and passed in pieces.

Surface-level guidance: The bill is the first step toward meaningfully regulating cryptocurrency in the US. But it only focuses on defining cryptocurrencies as commodities or securities and delegating jurisdiction to the appropriate regulatory body. There is little direction on how cryptocurrencies should be used and what would be considered dangerous or harmful to customers.

Regulation lags technology: Crypto lawyers were quick to review the bill and point out inconsistencies in some of the proposed regulations.

For example:

- The bill didn’t define decentralized digital asset exchanges even though it’s targeted with regulation. That could refer to a handful of things, like automatic market makers or liquidity pools.
- It’s also unclear in most cases what the designated clearing organization would be that needs to register crypto assets with the CFTC or SEC.

The decentralized technology used in the crypto markets doesn’t fit neatly into the definitions the CFTC and SEC use to regulate them. Further clarification will be needed in order to enforce the bill.

Copyright © 2022, Insider Intelligence Inc. All rights reserved.

The big takeaway: If passed, it seems the bill would shift most responsibilities to the CFTC and SEC, which would then need to take some time to develop their rules and regulations. Congress took a big step toward creating clarity in crypto markets, but it will be a while before any operational laws—and then agency rules—are in place. In the meantime, banks and financial institutions will likely continue to use verdicts from mounting lawsuits to navigate their crypto journeys.

Copyright © 2022, Insider Intelligence Inc. All rights reserved.