



2025 Industry Guide for Lawyers and Dev Teams, Part 2: **Recent and Existing Policy and Enforcement** *in Digital Assets, Blockchain, and Emerging Technologies*

By DLx Law PLLC

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As digital assets, blockchain, and related emerging technologies and industries have begun to mature, corresponding U.S. legal and regulatory perimeters remain fragmented and, at times, ambiguous. In recent years, federal regulators have escalated enforcement actions without issuing clear rules or guidance, lawmakers have introduced comprehensive proposals that have struggled to gain traction, and states have persisted in adopting disparate frameworks that complicate uniform compliance.

With President Joe Biden and much of the policy of his administration on the way out following the inauguration of President-elect Donald Trump, this article provides a recap and overview of the developments that have unfolded over these last several years. This article discusses (1) recent trends in federal regulatory enforcement, (2) the landscape of existing federal policy and guidance relevant to digital assets and other novel technologies, and (3) often-divergent state-level laws and rules that persist in the absence of a comprehensive federal approach, as well as the implications if that approach were to continue.

Disjointed regulations have in the last few years driven significant uncertainty among industry participants and, in some cases, encouraged project teams to relocate overseas for more predictable laws. Yet, policymakers up until now have remained laser focused on consumer protection and systemic risks in digital asset markets, often without providing transparent motives or clear guidance. With a new Congress and new presidential administration, this tension between mounting risks and shifting political tides will likely intensify debates over enforcement strategy, policy goals, and the future of U.S. leadership in digital assets and technological innovation more broadly.

1. Federal Regulatory Enforcement

Under Chairman Gary Gensler's leadership, the Securities and Exchange Commission (SEC) has initiated multiple high-profile enforcement actions against several large exchanges, including Binance,¹ Coinbase,²

¹ *SEC v. Binance Holdings Limited, et al.*, Case 1:23-cv-01599, Doc. 1 (Complaint), at ¶¶ 514-519, 526-543 (D.D.C., Jun. 5, 2024), available at <https://storage.courtlistener.com/recap/gov.uscourts.dcd.256060/gov.uscourts.dcd.256060.1.0.pdf> [hereinafter *SEC v. Binance Complaint*] (asserting claims against Binance and BAM trading for allegedly making unregistered primary market offers and sales of BNB and BUSD tokens, and for each failing to register as an exchange, clearing agency, and broker dealer in connection with facilitating secondary market sales of various digital asset tokens alleged to constitute securities).

² *SEC v. Coinbase, Inc & Coinbase Global, Inc.*, Case 1:23-cv-04738, Doc. 1 (Complaint), at ¶¶ 372-380 (S.D.N.Y., Jun. 6, 2023), available at <https://storage.courtlistener.com/recap/gov.uscourts.nysd.599908/gov.uscourts.nysd.599908.1.0.pdf> [hereinafter *SEC v. Coinbase Complaint*] (asserting claims against Coinbase for failing to register as an exchange, clearing agency, and broker dealer in connection with facilitating secondary market sales of various digital asset tokens alleged to constitute securities).

Kraken³—and also threatened action against the developers behind the Ethereum-based decentralized exchange Uniswap Labs⁴—for allegedly offering unregistered securities or facilitating their secondary exchange without proper licensure. Gensler’s SEC has not to date issued any relevant rules or guidance to industry and has instead attempted to apply the decades-old *Howey* test⁵ in its pleadings⁶ to argue why, for example, secondary market transactions involving certain digital asset ‘tokens’ constitute investment contracts (a kind of security).⁷ In doing so, the SEC has repeatedly signaled it seeks to bring many digital assets within its remit, even if their precise categorization is uncertain.⁸

The SEC’s actions have left entrepreneurs and market participants grappling with legal ambiguity, uncertain how to structure blockchain-based projects, token attributes (or ‘*tokenomics*’), transactions, or governance rights without risking SEC scrutiny. These conditions have increased risks, costs, and barriers to entry in the United States.⁹ Critics argue that relying on enforcement rather than transparent rulemaking chills

³ *SEC v. Payward, Inc. & Payward Ventures, Inc.*, Case 4:23-cv-06003-DMR, Doc. 1 (Complaint), at ¶¶ 446-454 (N.D. Cal., Nov. 20, 2023), available at https://storage.courtlistener.com/recap/gov.uscourts.cand.421113/gov.uscourts.cand.421113.1.0_3.pdf [hereinafter *SEC v. Kraken Complaint*] (asserting claims against Kraken and its U.S.-based company, formerly known as Payward Ventures, Inc., for each failing to register as an exchange, clearing agency, and broker dealer in connection with facilitating secondary market sales of various digital asset tokens alleged to constitute securities)

⁴ See generally Steven Stradbroke, *Defiant Uniswap Goes Public with SEC Wells Notice Details, Legal Response*, COINGEEK: NEWS: FIN. (May 23, 2024), <https://coingeek.com/defiant-uniswap-goes-public-with-sec-wells-notice-details-legal-response/> (reporting on Uniswap Labs’s public discussion of its receipt of a Wells Notice from the SEC on May 20, 2024, indicating the SEC would likely pursue charges against the software development company in connection with either primary market transactions involving UNI tokens or secondary market transactions of other digital asset tokens engaged in by users of the DEX protocol developed by Uniswap Labs); see also Uniswap Labs, Wells Notice Response, UNISWAP.ORG: BLOG (May 21, 2024), <https://blog.uniswap.org/wells-notice-response.pdf> (arguing to the SEC why it ought not to pursue any enforcement action against Uniswap Labs in consideration of the reasons why the developer does not engage in offers or sales of unregistered securities or facilitate the brokering, clearance, or exchange of unregistered securities). Following Uniswap Labs’s response to the SEC’s Wells notice, the SEC has not yet to date moved forward with filing any formal charges against Uniswap Labs (Universal Navigation Inc.), and no information as to possible charges or settlement negotiations have been leaked to the public.

⁵ See *SEC v. W.J. Howey Co.*, 328 U.S. 293, 301 (1946) (establishing long-standing precedent that an investment contract involves “an investment of money in a common enterprise with [the expectation of] profits to come solely from the efforts of others”).

⁶ Generally, the SEC’s pleadings and arguments across its various cases against digital asset services providers and blockchain project developers carry no consistent string of reasoning that could help digital assets and supported industries navigate the SEC’s concerns or adopt satisfactory compliance measures that could address them. See generally Jennifer Schulp, *Testimony Before the House Subcommittee on Digital Assets, Financial Technology, and Inclusion: Breaking Down the SEC’s Politicized Approach to Digital Assets*, CATO INST.: TESTIMONY (Sep. 17, 2024), <https://www.cato.org/testimony/dazed-confused-breaking-down-secs-politicized-approach-digital-assets> (arguing that the SEC’s recent enforcement actions against centralized digital asset exchanges lack any consistent application of the *Howey* test and offer no valid legal theories as to the existence of a common enterprise between the founders or developers of various token projects and the purchasers of tokens in the secondary market); see, e.g., *SEC v. Binance Complaint*, *supra* note 1 at ¶¶ 352-509; *SEC v. Coinbase Complaint*, *supra* note 2, at ¶¶ 114-305; *SEC v. Kraken Complaint*, *supra* note 3 at ¶¶ 228-445.

⁷ See, e.g., *SEC v. Binance Complaint*, *supra* note 1 at ¶¶ 352-509 (alleging at least 12 different digital asset tokens available for trading in a secondary market on the Binance platform to have been offered and sold as securities, including BNB, BUSD, SOL, ADA, MATIC, FIL, ATOM, SAND, MANA, ALGO, AXS, and COTI); *SEC v. Coinbase Complaint*, *supra* note 2, at ¶¶ 114-305 (alleging at least 13 different digital asset tokens available for trading in a secondary market on the Coinbase platform to have been offered and sold as securities, including SOL, ADA, MATIC, FIL, SAND, AXS, CHZ, FLOW, ICP, NEAR, VGX, DASH, and NEXO); *SEC v. Kraken Complaint*, *supra* note 3 at ¶¶ 228-445 (alleging at least 11 different digital asset tokens available for trading in a secondary market on the Kraken platform to have been offered and sold as securities, including ADA, ALGO, ATOM, FIL, FLOW, ICP, MANA, MATIC, NEAR, OMG, and SOL).

⁸ See generally Jonathan Schmalfeld & Stephen Rutenberg, *Assessing the Landscape: One Year into the SEC’s Litigation Against Major U.S. Digital Asset Exchanges*, NAT. L. REV. (Jul. 18, 2024), <https://natlawreview.com/article/assessing-landscape-one-year-secs-litigation-against-major-us-digital-asset> (analyzing recent SEC lawsuits to imply that, by not promulgating clear rules, the SEC’s enforcement actions and arguments in court indicate an attempt to bring digital assets within their authority to regulate); James Field, *Gensler Grilled Over SEC ‘Crypto’ Regulatory Overreach*, COINGEEK: NEWS: BUS. (Sep. 27, 2024), <https://coingeek.com/gensler-grilled-over-sec-crypto-regulatory-overreach/> (discussing the remarks of members of the U.S. House of Representatives whom, during a September 24, 2024, oversight hearing in which the SEC Commissioners gave testimony, advanced the view that Chairman Gensler’s SEC has attempted to assert jurisdiction over digital assets where it had been granted no such jurisdiction by Congress); see also Julia Shapero, *18 States Sue SEC and Gensler for ‘Regulatory Overreach’ on Crypto*, HILL: POLICY: TECH. (Nov. 14, 2024), <https://thehill.com/policy/technology/4991491-gary-gensler-crypto-enforcement/> (reporting on the lawsuit joined by 18 Republican state attorneys general in which filings argue the SEC overstepped its statutory authority in attempting to regulate digital assets).

⁹ See Andrew Singer, *Gensler’s SEC made U.S. ‘Nearly Untenable’ for Crypto Firms, Say Observers*, COINTELEGRAPH: NEWS (Nov. 26, 2024), <https://cointelegraph.com/news/gensler-sec-crypto-firms-us-government>; Jesse Hamilton, *Gary Gensler’s Contentious Reign Over Crypto Approaches its Twilight*, COINDESK: NEWS ANALYSIS: ELECTION COVERAGE 2024 (Oct. 22, 2024), <https://www.coindesk.com/news->

innovation and sows uncertainty rather than fostering sector growth.¹⁰ The Commission’s approach under Gensler has frustrated industry participants who contend they deserve a clearer regulatory framework rather than incremental litigation-driven guidance.¹¹

Despite the SEC’s wave of enforcement, U.S. courts have pushed back on many of its challenges, including those involving spot exchange-traded funds (“ETFs”) in bitcoin (BTC)¹² and Ether (ETH),¹³ the ultimate approvals of which have opened institutional pathways for cryptocurrency-based investment products.¹⁴ Although its efforts have been only moderately successful, the current SEC’s stance nonetheless underscores ongoing tensions between innovation and oversight.

The Commodity Futures Trading Commission (CFTC) has also increasingly exerted authority over certain parts of the digital assets sector in recent years. Between 2023 and 2024, the CFTC charged several different platforms and software developers—including but not limited to Binance,¹⁵ KuCoin,¹⁶ and, most recently, Uniswap Labs¹⁷—over allegations of offering, or facilitating the trading of, unregistered token-based derivatives positions to or by U.S. persons. Through these actions the existing CFTC has made clear it seeks to apply the registrations requirements of the Commodity Exchange Act (CEA) to the providers of, and the

[analysis/2024/10/22/gary-genslers-contentious-reign-over-crypto-approaches-its-twilight](https://www.sciencedirect.com/science/article/abs/pii/S1544612324014429); Aman Saggi, et al., *Uncertain Regulations, Definite Impacts: The Impact of the SEC’s Regulatory Interventions on Crypto Assets*, Elsevier: FIN. RESEARCH LETTERS (Vol. 72, No. 106413), ISSN 1544-6132 (rev. Oct. 9, 2024), available at <https://www.sciencedirect.com/science/article/abs/pii/S1544612324014429>.

¹⁰ Critics have argued that the SEC’s ‘regulation-by-enforcement’ approach likely has stifled U.S. domestic growth by delaying market clarity, thereby impeding institutional and retail adoption of emerging asset classes. See Messari, Inc., *Crypto Theses 2025*, MESSARI.IO, at 13 (Dec. 16, 2024), <https://messari.io/report-pdf/a929cd003f5e05ae8ef28cf4a6b4bfc.pdf> [hereinafter Messari 2025 Crypto Theses Report]; Jesse Hamilton, *supra* note 9; David Yaffe-Bellany, *Government Cracks Down on Crypto Industry with Flurry of Actions*, N.Y. TIMES (Feb. 18, 2023), <https://www.nytimes.com/2023/02/18/business/crypto-crackdown-regulation.html>.

¹¹ See Lydia Beyound, *Gensler Seeks More Crypto Sway as Republican Lawmakers Blast His Stance*, BLOOMBERG: NEWS: CRYPTO (Apr. 18, 2023), <https://www.bloomberg.com/news/articles/2023-04-18/gensler-seeks-more-crypto-sway-as-gop-lawmakers-blast-his-stance>.

¹² See *Grayscale Invs., LLC v. SEC*, 2023 WL 5708244 (D.C. Cir. 2023) (vacating the SEC’s denial of the Grayscale spot bitcoin ETF proposal); Vicky Ge Huang & Paul Kiernan, *SEC Approves Bitcoin ETFs for Everyday Investors*, WALL ST. J.: FIN.: REG. (Jan. 10, 2024), <https://www.wsj.com/finance/regulation/sec-approves-bitcoin-etfs-for-everyday-investors-de3125ef>; Paul Kiernan, *Grayscale’s Court Win Over SEC Lifts Hopes for Bitcoin ETF Approval*, WALL ST. J.: FIN.: REG. (Aug. 29, 2023), <https://www.wsj.com/finance/regulation/grayscale-wins-lawsuit-against-sec-over-bitcoin-etf-1b305cfa>.

¹³ See Amelia Matthewson, *SEC Approves Ether ETFs*, FINTECH MAGAZINE: CRYPTO (Jul. 25, 2024), <https://fintechmagazine.com/articles/sec-approves-ether-etfs>; Lucy Brewster, *Grayscale Ethereum ETF Rule Change Pulled*, ETF.COM: NEWS (May 9, 2024), <https://www.etf.com/sections/news/application-grayscale-ethereum-futures-etf-withdrawn>.

¹⁴ See Messari 2025 Crypto Theses Report, *supra* note 10, at 14-15.

¹⁵ *CFTC v. Changpeng Zhao*, et al., Case 1:23-cv-01887, Doc. 1 (Complaint), at ¶¶ 187-217 (N.D. Ill., Mar. 27, 2023), available at https://storage.courtlistener.com/recap/gov.uscourts.ilnd.431767/gov.uscourts.ilnd.431767.1.0_1.pdf [hereinafter *CFTC v. Binance Complaint*] (asserting claims against Binance, its affiliates, and their controller over allegations that the digital assets exchange executed retail commodity and futures transactions on an unregistered Board of Trade, offered and facilitated trading of illegal off-exchange commodity options, engaged in activities that can only be lawfully performed by a registered Futures Commission Merchant, and failed to register as a Designated Contract Market or Swap Execution Facility).

¹⁶ *CFTC v. Mek Global Limited*, et al., Case 1:24-cv-02255-VEC, Doc. 1 (Complaint), at ¶¶ 86-115 (S.D.N.Y., Mar. 26, 2024), available at https://storage.courtlistener.com/recap/gov.uscourts.nysd.618225/gov.uscourts.nysd.618225.1.0_1.pdf [hereinafter *CFTC v. KuCoin Complaint*] (asserting claims against KuCoin and its various owners and controllers over allegations that the digital assets exchange executed retail commodity and futures transactions on an unregistered Board of Trade, engaged in activities that can only be lawfully performed by a registered Futures Commission Merchant, and failed to register as a Designated Contract Market or Swap Execution Facility).

¹⁷ *CFTC v. Universal Navigation Inc. d.b.a. Uniswap Labs*, CFTC Docket No. 24-25, Order Instituting Proceedings Pursuant to CEA Section 6(c)-(d), Making Findings, and Imposing Remedial Sanctions, at 2-4 (Sep. 4, 2024), <https://www.cftc.gov/media/11201/enfuniswaplabsorder090424/download> [hereinafter *CFTC v. Uniswap Labs Consent Order*] (outlining Uniswap Labs’s consent to charges of Commodity Exchange Act violations for the software developer’s alleged facilitation of an automated market making process by creating a nonupgradeable protocol and maintaining a corresponding website that enabled users of the Uniswap platform to enter into leveraged positions in Ether (ETH) and bitcoin (BTC), and without having the platform designated or registered by the CFTC as a contract market for the underlying commodities, ETH and BTC).

developers of platforms providing, services that effectively create or enable the trading of “commodity interests”¹⁸ in cryptocurrencies or other digital assets as commodities.

Uniswap Labs, which is the developer behind decentralized exchange (“DEX”) protocol Uniswap,¹⁹ settled with the CFTC under a September 2024 consent order over charges of allegedly facilitating unregistered derivatives trading.²⁰ The Uniswap consent order comes a year after the CFTC settled charges against the developers of three other DeFi protocols,²¹ sparking considerable debate over the extent to which developers might be liable for creating nonupgradeable protocols that facilitate off-exchange derivatives trading or even other potentially legally restricted activities.²² Importantly, these settlements are not adjudications on the merits and therefore offer no binding legal precedent, but they do reveal the Commission’s current enforcement priorities.

Given the complexity involved in distinguishing between software development and the direct operation of a trading venue, the viability of the CFTC’s approach, if it continues,²³ could ultimately be tested through litigation or legislative reform.²⁴ Although the precise contours of CFTC jurisdiction remain contested—particularly in the context of platforms that blend spot trading of digital assets, derivatives, and decentralized financial tools—the agency’s attempts to regulate the activities of DEXs and DeFi platforms further complicate an already challenging compliance environment.²⁵

Many of the SEC’s and CFTC’s enforcement matters have been necessary, pursuing significant instances of fraud and market manipulation in connection with digital assets and DeFi platforms,²⁶ an ongoing

¹⁸ 7 U.S.C § 1a(9); 17 C.F.R. § 1.3 (2025).

¹⁹ Uniswap, <https://app.uniswap.org/>.

²⁰ See *CFTC v. Uniswap Labs Consent Order*, *supra* note 17, at 4-5.

²¹ See *CFTC v. Opyn, Inc.*, CFTC Docket No. 23-40, Order Instituting Proceedings Pursuant to CEA Section 6(c)-(d), Making Findings, and Imposing Remedial Sanctions (Sep. 7, 2023), <https://www.cftc.gov/media/9211/enfopynorder090723/download>; *CFTC v. ZeroEx, Inc.*, CFTC Docket No. 23-41, Order Instituting Proceedings Pursuant to CEA Section 6(c)-(d), Making Findings, and Imposing Remedial Sanctions (Sep. 7, 2023), <https://www.cftc.gov/media/9216/enfzeroexorder090723/download>; *CFTC v. Deridex, Inc.*, CFTC Docket No. 23-42, Order Instituting Proceedings Pursuant to CEA Section 6(c)-(d), Making Findings, and Imposing Remedial Sanctions (Sep. 7, 2023), <https://www.cftc.gov/media/9221/enfderidexorder090723/download>.

²² See Addison Morgan, et al., *Breaking Down CFTC’s Novel Theory Driving Uniswap Action*, TROUTMAN PEPPER: INSIGHTS (Oct. 8, 2024), <https://www.troutman.com/insights/breaking-down-cftcs-novel-theory-driving-uniswap-action.html>.

²³ See DLx Law PLLC, *Current Legal Trends and Developments in Digital Assets, Blockchain, and Emerging Technologies*, DLx LAW: THOUGHT LEADERSHIP: 2025 INDUS. GUIDE. FOR LAWYERS & DEV TEAMS, PT. 3, at 16-17 (Jan. 13, 2025), https://dlxlaw.com/wp-content/uploads/2025/01/Current-Legal-Trends-and-Developments-in-Digital-Assets-Blockchain-and-Emerging-Technologies_01.13.25.pdf (describing how the CFTC’s current approach could potentially change under the leadership of a chair appointed by the incoming Trump administration).

²⁴ See Alexander Drylewski, et al., *CFTC Charges DeFi Developers with Facilitating Off-Exchange Trading*, SKADDEN: INSIGHTS: PUBS. (Sep. 20, 2023), <https://www.skadden.com/insights/publications/2023/09/cftc-charges-defi-developers-with-facilitating-off-exchange-trading>.

²⁵ See Dan Davis & Alex Kim, *CFTC’s Uniswap Settlement Sparks Debate on DeFi Regulation*, KATTEN: POSTS (Sep. 5, 2024), <https://quickreads.ext.katten.com/post/102jgc/cftcs-uniswap-settlement-sparks-debate-on-defi-regulation>.

²⁶ See CFTC Release No. 9011-24, *FY 2024 Enforcement Results* (Dec. 4, 2024), <https://www.cftc.gov/PressRoom/PressReleases/9011-24>; SEC Release No. 2024-186, *FY 2024 Enforcement Results* (Nov. 22, 2024), <https://www.sec.gov/newsroom/press-releases/2024-186>; SEC Release No. 2023-234, *FY 2023 Enforcement Results* (Nov. 14, 2023), <https://www.sec.gov/newsroom/press-releases/2023-234>; CFTC Release No. 8822-23, *FY 2023 Enforcement Results* (Nov. 7, 2023), <https://www.cftc.gov/PressRoom/PressReleases/8822-23>; see generally Joel Cohen, et al., *SEC Enforcement Year-End Overview*, WHITE & CASE: INSIGHTS: ALERTS (Dec. 20, 2024), <https://www.whitecase.com/insight-alert/sec-enforcement-year-end-overview> (reviewing the SEC’s 2024 enforcement actions, including those primarily focused on instances of fraud and market making); CFTC Enforcement Director Ian McGinley, *Remarks at the City Bar White Collar Institute: Trends in the CFTC’s Recent Crypto Enforcement Actions*, COMMODITY FUTURES TRADING COMM’N: PUBLIC STATEMENTS & REMARKS (May 23, 2024), <https://www.cftc.gov/PressRoom/SpeechesTestimony/opamcginley4> (outlining the CFTC’s enforcement focus on instances of fraud and market making in 2023 and 2024).

challenge of which the Federal Trade Commission (FTC) has also taken up.²⁷ Nevertheless, effected industries are forced to reckon with these two agencies' often-overlapping or conflicting regulatory mandates, each of them wielding unique statutory authority and enforcement prerogatives.²⁸ Despite the air of uncertainty that has persisted across effected industries as a result, federal agencies have, to date, struggled to adopt any kind of clear, consistent, flexible, or comprehensive framework in their interests in protecting U.S. consumers, investors, or markets.

2. Existing Federal Policy & Guidance

It is unclear the exact extent to which the inconsistent enforcement and policy initiatives of Gensler's SEC (or any of the other independent federal agencies or departments) were or were not consistent with the expectations of President Joe Biden's administration.²⁹ Nevertheless, digital asset-related activity has increasingly become a focal point for many federal authorities under Biden's tenure, especially where systemic risks are concerned. Many financial regulators have in that time pursued policies with the appearance of attempting to insulate the conventional financial services and wealth sectors from an asset class they see as potentially 'systemically' significant and risky, but this has contributed to the chilling effect that regulations have had on affected industries in the United States.

Concerns for systemic risks.

Over the last few years, federal regulatory efforts related to digital assets have been largely shaped by the Financial Stability Oversight Council (FSOC),³⁰ an office within the Treasury Department that coordinates interagency responses to systemic risks in U.S. financial markets. Since at least 2021, the FSOC has released several reports identifying critical risk areas in connection with digital assets and expressing concerns about operational vulnerabilities that could spill over into traditional financial systems.³¹

²⁷ See *FTC v. Voyager Digital, LLC*, et al., Case 1:23-cv-08960, Doc. 1 (Complaint) (S.D.N.Y., Oct. 12, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/voyager_complaint_filed.pdf; FTC Press Release, *FTC Reaches Settlement with Crypto Company Voyager Digital; Charges Former Executive with Falsely Claiming Consumers' Deposits Were Insured by FDIC*, FED. TRADE COMM'N: NEWS & EVENTS (Oct. 12, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/10/ftc-reaches-settlement-crypto-company-voyager-digital-charges-former-executive-falsely-claiming>; *FTC v. Celsius Network Inc.*, et al., Case 1:23-cv-06009, Doc. 1 (Complaint) (S.D.N.Y., Jul. 13, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/2223137celsiusnetworkcomplaint.pdf; FTC Press Release, *FTC Reaches Settlement with Crypto Platform Celsius Network; Charges Former Executives with Duping Consumers into Transferring Cryptocurrency into their Platform and then Squandering Billions in User Deposits*, FED. TRADE COMM'N: NEWS & EVENTS (Jul. 13, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/07/ftc-reaches-settlement-crypto-platform-celsius-network-charges-former-executives-duping-consumers>; Lauren Lerman & Duane Pozza, *The FTC is Targeting Crypto Too with a Significant New Enforcement Action*, JDSUPRA: LEGAL NEWS (Jul. 21, 2023), <https://www.jdsupra.com/legalnews/the-ftc-is-targeting-crypto-too-with-a-9740039/>.

²⁸ See *CFTC vs. SEC: Navigating Regulatory Overlap in the Crypto Market*, MERKLE SCIENCE: BLOG (Nov. 19, 2024), <https://blog.merklescience.com/general/cftc-vs.-sec-navigating-regulatory-overlap-in-the-crypto-market>; Solidity Academy, *Decoding the SEC vs. CFTC Battle: Unraveling the Future of Crypto Regulation in the U.S.*, MEDIUM.COM: COINMONKS (Jan. 29, 2024), <https://medium.com/coinmonks/decoding-the-sec-vs-cftc-battle-unraveling-the-future-of-crypto-regulation-in-the-u-s-b374c579f51f>.

²⁹ See Jesse Hamilton, *SEC's Gensler Going Rogue in Solo Quest to Stop U.S. Crypto Legislation?*, COINDESK: POLICY (May 22, 2024), <https://www.coindesk.com/policy/2024/05/22/secs-gensler-going-rogue-in-solo-quest-to-stop-us-crypto-legislation>; Brandon Gillespie, *Democrats Turn on Biden SEC Chair Over Increased Regulation*, FOX BUS.: POLITICS (Dec. 25, 2023), <https://www.foxbusiness.com/politics/democrats-turn-biden-sec-chair-increased-regulation>; Declan Harty, *Why Biden's SEC Chief is Enraging Wall Street*, POLITICO: NEWS: FIN. & TAX (Oct. 12, 2022), <https://www.politico.com/news/2022/10/12/wall-street-gary-gensler-sec-00061245>.

³⁰ FSOC was created by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376-2223) in the wake of the 2007-2008 financial crisis, structured to help ensure continuous collaboration among the heads of each federal financial regulator to be able to identify, mitigate, and react to systemic risks present in the greater U.S. financial system.

³¹ FIN. STABILITY OVERSIGHT COUNCIL, *Report on Digital Asset Financial Stability Risks and Regulation* (Oct. 2022), <https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf>.

Accordingly, the FSOC has emphasized the need for consistent disclosures, prudential oversight, and increased regulatory coordination to mitigate the potential for systemic disruptions, and the various federal financial regulatory have pursued policy aims within these lines. For example, guidance from the SEC and other regulators has significantly shaped industry behavior in an effort to curb the potential significance of their effects on the U.S. financial sector. Consequently, these policy approaches have largely deterred not just industries at large but also federal banking institutions (both retail and commercial) from offering products or services related to digital assets.

Most notably, the SEC’s 2022 Staff Accounting Bulletin No. 121 (“**SAB 121**”)³² has compelled banking institutions to treat these assets as liabilities on their balance sheets.³³ This approach, although aimed at prudential soundness, has been widely criticized for its inconsistencies with the guidance of the Office of the Comptroller of the Currency (OCC),³⁴ and for inhibiting robust institutional involvement in digital assets by increasing the capital requirements and compliance burdens associated with their custody.³⁵

Systemic risks related to digital assets, coupled with concerns for fraud and consumer protection, have also become a focal point of the Consumer Financial Protection Bureau (CFPB). Like the FSOC, the CFPB is a federal agency that was propped up by the Dodd-Frank Act, and it has in recent years been exploring the boundaries of its federal consumer protection mandate in connection with digital payments,³⁶ stablecoin-based remittances,³⁷ and digital wallet software providers.³⁸ Although still emerging in scope, the CFPB’s focus highlights tensions between preserving consumer safeguards and fostering conditions conducive to technological experimentation and industry growth.³⁹

Increased awareness for systemic risks was also one of the primary motivating factors behind the U.S. Treasury Department’s attempted push for Congress to adopt stablecoin legislation.⁴⁰ As Treasury Secretary Janet Yellen has framed it, stablecoin legislation could help to correct for many of these risks by clarifying

³² SEC. & EXCH. COMM’N, Staff Accounting Bulletin No. 121 (Mar. 31, 2022), <https://www.sec.gov/oca/staff-accounting-bulletin-121>.

³³ See *id.* at Topic 5 (Miscellaneous Accounting).

³⁴ CURRENCY COMPTROLLER OFF., Interpretive Letter 1170, *Re: Authority of a National Bank to Provide Cryptocurrency Custody Services for Customers* (Jul. 22, 2020), <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf>.

³⁵ See Maxwell Mutuma, *Gary Gensler Defends SEC’s Use of SAB 121 Amid Criticism*, COIN REPUBLIC (Sep. 25, 2024), <https://www.thecoinrepublic.com/2024/09/25/gary-gensler-defends-secs-use-of-sab-121-amid-criticism/>; David Stier, et al., *The Saga of SAB 121: Losing a Battle, Yet Gaining Ground*, DLA PIPER: INSIGHTS: PUBS.: BLOCKCHAIN & DIGITAL ASSETS NEWS & TRENDS (Jul. 31, 2024), <https://www.dlapiper.com/en-us/insights/publications/blockchain-and-digital-assets-news-and-trends/2024/the-saga-of-sab-121>; Rep. Mike Flood & Rep. Wiley Nickel, *It’s Time to Overturn SAB 121*, BLOCKWORKS: NEWS: OPINION (May 15, 2024), <https://blockworks.co/news/senate-gensler-sec-overturn-sab-121>; Crystal Kim, *House Votes to Overturn SEC Guidance on Crypto Custody*, AXIOS: BUS. (May 8, 2024), <https://www.axios.com/2024/05/08/house-vote-sab121-sec-guidance-crypto-custody>.

³⁶ CONSUMER FIN. PROT. BUR., Final Rule: Defining Larger Participants of a Market for General-Use Digital Consumer Payment Applications, 89 FED. REG. 99,582-653 (Dec. 10, 2024), available at <https://www.federalregister.gov/documents/2024/12/10/2024-27836/defining-larger-participants-of-a-market-for-general-use-digital-consumer-payment-applications>.

³⁷ CONSUMER FIN. PROT. BUR., Proposed Rule & Request For Public Comment: Remittance Transfers Under the Electronic Fund Transfer Act (Regulation E), 89 Fed Reg. 79,456-474 (Sep. 30, 2024), available at <https://www.federalregister.gov/documents/2024/09/30/2024-22004/remittance-transfers-under-the-electronic-fund-transfer-act-regulation-e>.

³⁸ CONSUMER FIN. PROT. BUR., Final Rule: Required Rulemaking on Personal Financial Data Rights (Open Banking Rule), 89 FED. REG. 90,838-997 (Nov. 18, 2024), available at <https://www.federalregister.gov/documents/2024/11/18/2024-25079/required-rulemaking-on-personal-financial-data-rights>.

³⁹ See Andrew Glass, et al., *U.S. Policy and Regulatory Alert: Overview of the CFPB’s Proposed Open Banking Rule and Final Industry Standard Setting Rule*, K&L GATES (Jun. 20, 2024), <https://www.klgates.com/Overview-of-the-CFPBs-Proposed-Open-Banking-Rule-and-Final-Industry-Standard-Setting-Rule-6-20-2024>.

⁴⁰ See Treasury Secretary Janet Yellen, *Remarks at the Open Session of the Financial Stability Oversight Council Meeting*, TREASURY DEP’T: NEWS: SEC. STATEMENTS & REMARKS (Dec. 6, 2024), <https://home.treasury.gov/news/press-releases/jy2737>.

the prudential regulatory treatment of stablecoins and stablecoin issuers, including by specifying redemption rights and imposing compositional reserve requirements on issuers.⁴¹ Despite these efforts, as well as significant pushes made by industry,⁴² comprehensive federal legislation has remained elusive. Major congressional proposals introduced in 2022–2024—ranging from stablecoin-specific bills⁴³ to broader frameworks addressing digital asset spot markets, token issuance, and taxation⁴⁴—repeatedly stalled amid partisan divides and competing policy priorities.⁴⁵

Broader approaches to emerging technologies.

Although the exact extent to which federal regulatory agencies have been acting in step with the Biden administration’s goals is not entirely clear, the President has championed many visible policy initiatives since taking office that give a potentially mixed narrative. Biden’s track record appears to demonstrate an attempt at balancing needs to promote innovation and U.S. competitiveness with concerns for systemic risks related not only to digital assets and blockchain but also other emerging technologies, including artificial intelligence (or ‘AI’).

Among the earliest signals of Biden’s focus on emerging technologies was his administration’s May 2021 executive order⁴⁶ seeking to safeguard national infrastructure against growing cyber threats, which expanded on initial policy efforts that began under the first Trump administration⁴⁷ and foreshadowed ever-increasing federal attention to technology-driven vulnerabilities.⁴⁸ Then, in a more direct acknowledgement of growth in digital assets and related risks, President Biden signed a March 2022 executive order⁴⁹ directing

⁴¹ See *id.*; Treasury Secretary Janet Yellen, *Testimony Before the House Committee on Financial Services*, TREASURY DEP’T: NEWS: TESTIMONIES (Feb. 6, 2024), <https://home.treasury.gov/news/press-releases/jy2077>.

⁴² See BLOCKCHAIN ASS’N, *Press Release: House Passage of FIT21 Act is ‘Watershed Moment’ for Crypto Industry* (May 22, 2024), <https://theblockchainassociation.org/house-passage-of-fit21-act-is-watershed-moment-for-crypto-industry/>; Hannah Lang, *Crypto Bill Passes Congressional Committee in Victory for Industry*, REUTERS: TECH. (Jul. 26, 2023), <https://www.reuters.com/technology/us-congressional-committee-set-weigh-crypto-bills-2023-07-26/>; Taylor Giorno & Inci Sayki, *Cryptocurrency Industry Lobbying and Political Contributions Skyrocketed in 2022*, OPENSECRETS.ORG: NEWS & ANALYSIS (Mar. 13, 2023), <https://www.opensecrets.org/news/2023/03/cryptocurrency-industry-lobbying-and-political-contributions-skyrocketed-in-2022/>; Eric Lipton & David Yaffe-Bellany, *Crypto Industry Helps Write, and Pass, Its Own Agenda in State Capitols*, N.Y. TIMES (Apr. 10, 2022), <https://www.nytimes.com/2022/04/10/us/politics/crypto-industry-states-legislation.html>.

⁴³ See, e.g., U.S. Senate Bill S.4155, Lummis-Gillibrand Payment Stablecoin Act, introduced by Sen. Cynthia Lummis (R-Wyo.) (Apr. 17, 2024), <https://www.congress.gov/bill/118th-congress/senate-bill/4155>.

⁴⁴ See, e.g., U.S. House Bill H.R.4763, Financial Innovation and Technology for the 21st Century Act, introduced by Rep. Glenn Thompson (R-Pa.-15) (Jul. 20, 2023), <https://www.congress.gov/bill/118th-congress/house-bill/4763>.

⁴⁵ See Sarah Wynn, *New Congress, New Crack at Crypto Legislation: What’s Up Next on the Hill in 2025*, THEBLOCK: POLICY (Dec. 26, 2024), <https://www.theblock.co/post/330896/new-congress-new-crack-at-crypto-legislation-whats-up-next-on-the-hill-in-2025>; Casey Wagner, *Crypto Bill Update: What Legislation is Making Its Way Forward?*, BLOCKWORKS: NEWS: POLICY (May 14, 2024), <https://blockworks.co/news/crypto-bills-in-house-and-senate>.

⁴⁶ See Executive Order 14028, *Improving the Nation’s Cybersecurity* (May 12, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/05/12/executive-order-on-improving-the-nations-cybersecurity/> [hereinafter Biden 2021 National Cybersecurity E.O.].

⁴⁷ See Executive Order 13984, *Taking Additional Steps To Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities* (Jan. 19, 2021), <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-taking-additional-steps-address-national-emergency-respect-significant-malicious-cyber-enabled-activities/> [hereinafter Trump 2021 Cyber Threats E.O.]; Executive Order 13694, *Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities* (Apr. 1, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/04/01/executive-order-blocking-property-certain-persons-engaging-significant-m> [hereinafter Trump 2015 Cyber Threats E.O.].

⁴⁸ The executive order’s emphasis on safeguarding critical infrastructure indicated a broader federal recognition of technology-driven vulnerabilities that could intersect with digital assets and emerging industries, though they were not explicitly addressed. See Biden 2021 National Cybersecurity E.O., *supra* note 46.

⁴⁹ Executive Order 14067, *Ensuring Responsible Development of Digital Assets* (Mar. 9, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/03/09/executive-order-on-ensuring-responsible-development-of-digital-assets/> [hereinafter Biden 2022 Responsible Digital Assets E.O.].

federal agencies to coordinate on issues ranging from consumer protection to illicit finance—a move stated with the intent to preserve U.S. leadership in financial innovation.

In pursuit of its directives under the March 2022 executive order, the Commerce Department issued a notice that May requesting public comment on a potential framework to enhance U.S. competitiveness in digital assets industries.⁵⁰ Although the Commerce Department’s initiative yielded important dialogue on potential standard-setting objectives, it never culminated in any major legislative or regulatory efforts, possibly reflecting complexities and competing priorities among federal stakeholders. By October 2023, the Biden administration also started turning its focus toward AI and issued an executive order⁵¹ mandating federal regulatory bodies (and the developers of related technologies) to uphold public safety and consumer protection efforts while still leaving room for potential industry-led growth.

Despite early-term initiatives to balance perceived risks against the need to preserve and protect the position of—and encourage growth and innovation in—U.S. business and industry in connection with digital assets and emerging technologies, several of the Biden administration’s most recent policy efforts on this front have been criticized for compelling contrary effects. For example, industry proponents have widely decried the administration’s March 2024 budget proposal, which included a proposed 30% tax on electricity use by cryptocurrency miners.⁵² The likely tendency of such a move to incentivize that vast majority of U.S. mining operations to relocate overseas, however, was seen by many stakeholders as an attack on digital assets.⁵³

Furthermore, in January 2024, the Commerce Department’s Bureau of Industry and Security (“BIS”), in delivering on its mandates under the January 2021 and October 2023 executive orders, proposed a rule that would subject the U.S.’s biggest cloud infrastructure providers to direct regulatory oversight. Although primarily framed as a measure meant to bolster U.S. cybersecurity and financial stability, the BIS’s proposed rule, if it were to be implemented, could significantly affect digital asset exchanges, DeFi platforms, and other businesses in emerging technologies and industries that are increasingly reliant on third-party cloud solutions.⁵⁴

Taken together, these events portray a piecemeal yet deliberate policy path under the Biden administration—one that seeks to hedge against perceived systemic, consumer, and climate risks while still

⁵⁰ COMMERCE DEP’T, Notice and Request for Comment on Developing a Framework on Competitiveness of Digital Asset Technologies, 87 FED. REG. 30450-30452 (May 19, 2022), <https://www.federalregister.gov/documents/2022/05/19/2022-10731/developing-a-framework-on-competitiveness-of-digital-asset-technologies>.

⁵¹ Executive Order 14110, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence* (Oct. 30, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/10/30/executive-order-on-the-safe-secure-and-trustworthy-development-and-use-of-artificial-intelligence/> [hereinafter Biden 2023 Trustworthy AI Development E.O.].

⁵² TREASURY DEP’T, General Explanations of the Administration’s Fiscal Year 2025 Revenue Proposals, at 72 (Mar. 11, 2024), <https://home.treasury.gov/system/files/131/General-Explanations-FY2025.pdf> (accompanying OFF. MGMT. & BUDGET: Proposed U.S. Government Budget for Fiscal Year 2025, WHITE HOUSE: BUDGET DOCS. (Mar. 11, 2024), https://www.whitehouse.gov/wp-content/uploads/2024/03/budget_fy2025.pdf). The proposal for this so-called “mining tax,” drawing in part on findings by FSOC, likely reflected the administration’s ongoing worries that widespread, energy-intensive mining operations could contribute to both environmental and market disruptions. *See id.*

⁵³ *See* Susie Violet Ward, *DAME Tax on Bitcoin Mining Threatens Energy Prices and Stability*, FORBES: DIGITAL ASSETS (Jul. 3, 2024), <https://www.forbes.com/sites/digital-assets/2024/07/03/dame-tax-on-bitcoin-mining-threatens-energy-prices-and-stability/>; Thomas Carreras, *Biden’s 30% Tax Would ‘Destroy’ Bitcoin Mining in the U.S., Industry Says*, DL NEWS: ARTS.: REG. (Mar. 13, 2024), <https://www.dlnews.com/articles/regulation/bidens-dame-tax-could-destroy-bitcoin-mining-in-us/>.

⁵⁴ *See* DLx Alert: Commerce Department Proposes Rule to Require Cloud Infrastructure Service Providers to Adopt Enhanced KYC and Due Diligence Procedures, Citing National Security Concerns, DLX LAW PLLC: NEWS & EVENTS (Mar. 8, 2024), <https://dlxlaw.com/news-events-blog/merce-ddlx-law-alert-commerce-department-proposes-rule-to-require-cloud-infrastructure/>.

(at least nominally) supporting an environment where new financial technologies can evolve. Nevertheless, concerns from stakeholders in affected industries primarily arise from the air of uncertainty that has persisted under Biden’s policy efforts.

3. State-Level Developments & Implications If Federal Inaction Endures

On the state level, the legal environment is equally complex and evolving—a reality largely perpetuated by the absence of any comprehensive federal framework.⁵⁵ Some state regimes are burdensome and expensive, and the differences among them continues to make universal compliance a gruesome task. For example, New York’s BitLicense regime⁵⁶ is too prescriptive to support the development of novel new projects, and it presents a long, difficult, and costly process imposing high barriers to entry for digital asset service providers hoping to operate in the state.⁵⁷ In contrast, Wyoming crafted a series of crypto-friendly statutes and regulations within the last few years⁵⁸ and established a special purpose institution charter⁵⁹ aimed at attracting digital asset businesses by providing legal certainty and a more permissive operating environment.⁶⁰

Some states, like California, have begun implementing frameworks aimed at standardizing digital asset regulations and harmonizing them with broader state and federal policies.⁶¹ Meanwhile, a handful of other states continue experimenting with novel regulatory approaches to custody, compliance, and chartering.⁶² This patchwork of laws and guidelines nevertheless often imposes overlapping or conflicting obligations, requiring businesses to adopt complex compliance strategies or limit their service offerings. These inefficiencies have prompted calls for federal preemption or uniform national standards to reduce regulatory

⁵⁵ See generally Messari 2025 Crypto Theses Report, *supra* note 10, at 12 (reasoning that disparities among state regulatory regimes underscores the fragmented nature of digital asset oversight in the U.S.).

⁵⁶ 23 N.Y.C.R.R. pt. 200 (2024); see N.Y. DEP’T FIN. SERVS., *Virtual Currency Businesses: Licensing and Resources*, N.Y.D.F.S.: VIRTUAL CURRENCY BUS., https://www.dfs.ny.gov/virtual_currency_businesses (last visited Jan. 3, 2024).

⁵⁷ See Yessi Bello Perez, *The Real Cost of Applying for a New York BitLicense*, COINDESK: MARKETS (rev. Apr. 9, 2024), <https://www.coindesk.com/markets/2015/08/13/the-real-cost-of-applying-for-a-new-york-bitlicense>; James Field, *BitLicense Oversight Criticized in New York Comptroller’s Report*, COINGEEK: NEWS: BUS. (Jan. 11, 2024), <https://coingeek.com/bitlicense-oversight-criticized-in-new-york-comptroller-report/>; Jason Cabral, et al., *NYDFS’s Virtual Currency Oversight Plan Lacks Clarity*, GIBSON DUNN FOR LAW360 (Jun. 12, 2023), <https://www.gibsondunn.com/wp-content/uploads/2023/06/Cabral-Weed-Castaneda-NYDFS-Virtual-Currency-Oversight-Plan-Lacks-Clarity-Law360-06-12-2023.pdf>; David Adler, *The BitLicense: Regulatory Overreach or Prudent Response?*, FORDHAM J. CORP. & FIN. L.: BLOG (Mar. 26, 2018), <https://news.law.fordham.edu/jcfl/2018/03/26/the-bitlicense-regulatory-overreach-or-prudent-response/>.

⁵⁸ See, e.g., The 2019 Wyoming Digital Asset Statute, WYO. STAT. §§ 34-29-101 *et seq.*; The Wyoming Decentralized Autonomous Organization Supplement Statute, WYO. STAT. §§ 17-31-101 *et seq.*

⁵⁹ The Wyoming Special Purpose Depository Institutions Act, WYO. STAT. §§ 13-12-101 *et seq.*

⁶⁰ See McDermott Will & Emery, *Wyoming Protects Cryptocurrency and Fiat Customers with First-of-its-Kind Cryptocurrency Bankruptcy Law*, MWE.COM: MEDIA (Mar. 28, 2024), <https://www.mwe.com/media/wyoming-protects-cryptocurrency-and-fiat-customers-with-first-of-its-kind-cryptocurrency-bankruptcy-law/>; Leo Schwartz, *Wyoming Wants to Become the Delaware of DAOs with New Crypto Law for Decentralized Autonomous Organizations*, FORTUNE: CRYPTOCURRENCY (Mar. 8, 2024), <https://fortune.com/crypto/2024/03/08/wyoming-dao-al6z-crypto-crypto-blockchain-ooki/>; ECONOMIST, *Wyoming Wants to Become America’s Crypto Capital* (Sep. 14, 2023), <https://www.economist.com/united-states/2023/09/14/wyoming-wants-to-become-americas-crypto-capital>; Kurtin PLLC, *Wyoming’s Digital Assets and DAO Laws and How to Use Them*, KURTINLAW.COM (Jan. 2023), <https://kurtinlaw.com/wp-content/uploads/2023/01/Wyoming-Digital-Assets-Laws-01.2023.pdf>.

⁶¹ California Digital Financial Assets Law, CAL. FIN. CODE §§ 3101 *et seq.*; see Keith Barnett, et al., *Understanding the DFPI’s Proposed Rules: A Deep Dive Into California’s Digital Financial Assets Law*, CONSUMER FIN. SERVS. L. MONITOR: PODCASTS (Dec. 17, 2024), <https://www.consumerfinancialserviceslawmonitor.com/2024/12/understanding-the-dfpis-proposed-rules-a-deep-dive-into-californias-digital-financial-assets-law-ce/>.

⁶² For example, Wyoming’s SPDI charters and various trust company frameworks offer alternative means for compliant market participation, positioning the mid-west mountain state as an attractive jurisdiction for ventures seeking certainty amid the broader regulatory uncertainty. See ECONOMIST, *supra* note 60.

bottlenecks.⁶³ As long as the U.S. remains without a clear and comprehensive federal digital asset policy, however, businesses will likely continue navigating a multi-jurisdictional maze, attempting to reconcile federal hesitancy with state-level advances.

Effects of fragmented state laws and anticipated federal regulatory lag.

If federal authorities fail to clarify legal standards for digital assets, blockchain, and other emerging technologies, U.S. innovators will remain uncertain. Already constrained by a patchwork of state laws, these industries risk additional offshoring, re-shoring, and consolidation. These political and regulatory intricacies create serious obstacles for developers, investors, and firms in U.S. digital asset and emerging tech industries. High compliance costs—especially in major markets like New York or California—pose barriers to entry for many businesses. Absent federal clarity, numerous blockchain projects and decentralized systems—which often use digital assets for governance and network security incentives—have set up shop outside the United States.⁶⁴

Despite incremental legislative efforts, inconsistent federal guidance and state-level rules make compliance a moving target. As a result, many U.S. startups and established firms relocate to places like Singapore,⁶⁵ Dubai,⁶⁶ or the European Union,⁶⁷ which offer clearer frameworks (e.g., the EU’s Markets in Crypto-Assets Regulation, or ‘MiCA’).⁶⁸ Although sometimes also more stringent the regulations in these destinations have provided a degree of certainty currently unavailable in the United States.⁶⁹ This uncertainty hinders

⁶³ See NAT. CONF. STATE LEGISLATORS, *Cryptocurrency, Digital or Virtual Currency, and Digital Assets 2024 Legislation* (rev. Nov. 18, 2024), <https://www.ncsl.org/financial-services/cryptocurrency-digital-or-virtual-currency-and-digital-assets-2024-legislation>; Joseph Galasso, *The Crypto Revolution: A Comparative Analysis of Crypto Regulation in the United States and the European Union*, 39(4) *TOURO L. REV.* 1392 (Art. 12) (Nov. 2024), available at <https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?article=3473&context=lawreview>; Joseph Jasperse & Sarah Hammer, *The State of Stablecoin Regulation and Emergence of Global Principles*, *AM. BAR ASS’N: BUS. L. TODAY* (Sep. 20, 2024), https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-september/state-stablecoin-regulation-emergence-global-principles/; THOMSON REUTERS, *2023 Cost of Compliance Report: Regulatory Burden Poses Operational Challenges for Compliance Officers* (May 25, 2023), <https://www.thomsonreuters.com/en-us/posts/investigation-fraud-and-risk/2023-cost-of-compliance-report/>.

⁶⁴ This complexity and uncertainty often encourages companies to locate in (or relocate to) jurisdictions outside the U.S. with clearer regulatory frameworks. See Jeff Wilser, *The World’s Best Crypto Policies: How They Do It in 37 Nations*, *COINDESK: CONSENSUS MAG.: POLICY WEEK* 2023 (Sep. 28, 2023), <https://www.coindesk.com/consensus-magazine/2023/01/23/the-worlds-best-crypto-policies-how-they-do-it-in-37-nations>.

⁶⁵ See MONETARY AUTH. SINGAPORE, *Media Release: MAS Announces Plans to Support Commercialisation of Asset Tokenisation*, *MAS: NEWS: MEDIA RELEASES* (Nov. 4, 2024), <https://www.mas.gov.sg/news/media-releases/2024/mas-announces-plans-to-support-commercialisation-of-asset-tokenisation>; MONETARY AUTH. SINGAPORE, *Media Release: MAS Expands Scope of Regulated Payment Services, Introduces User Protection Requirements for Digital Payment Token Service Providers*, *MAS: NEWS: MEDIA RELEASES* (Apr. 2, 2024), <https://www.mas.gov.sg/news/media-releases/2024/mas-expands-scope-of-regulated-payment-services>; MONETARY AUTH. SINGAPORE, *Media Release: MAS Strengthens Regulatory Measures for Digital Payment Token Services*, *MAS: NEWS: MEDIA RELEASES* (Nov. 23, 2023), <https://www.mas.gov.sg/news/media-releases/2023/mas-strengthens-regulatory-measures-for-digital-payment-token-services>; MONETARY AUTH. SINGAPORE, *Media Release: MAS Proposes Framework for Digital Asset Networks*, *MAS: NEWS: MEDIA RELEASES* (Jun. 26, 2023), <https://www.mas.gov.sg/news/media-releases/2023/mas-proposes-framework-for-digital-asset-networks>.

⁶⁶ See DUBAI VIRTUAL ASSETS REG. AUTH., *Overview: Regulations and Rulebooks*, <https://rulebooks.vara.ae/> (last visited Jan. 6, 2024); DUBAI VIRTUAL ASSETS REG. AUTH., *Press Release: VARA and DET Join Forces to Establish Best-in-Class Market Assurance Standards for Virtual Assets*, *DUBAI VARA: NEWS* (Aug. 9, 2023), <https://www.vara.ae/en/news/vara-and-det-join-forces-to-establish-best-in-class-market-assurance-standards-for-virtual-assets/>; DUBAI VIRTUAL ASSETS REG. AUTH., *Press Release: SCA-VARA to ensure Unified VA Sector Register of Regulated VASPs for the UAE*, *DUBAI VARA: NEWS* (Jul. 17, 2023), <https://www.vara.ae/en/news/sca-vara-to-ensure-unified-va-sector-register-of-regulated-for-the-uae/>.

⁶⁷ See FinTech News Switzerland, *EU Leads in Crypto Regulation with MiCA, Travel Rule Updates*, *FINTECH NEWS: BLOCKCHAIN* (Nov. 18, 2024), https://fintechnews.ch/blockchain_bitcoin/eu-leads-in-crypto-regulation-with-mica-travel-rule-updates/73176/.

⁶⁸ See Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on Markets in Crypto-Assets (May 31, 2023), available at <https://www.esma.europa.eu/esmas-activities/digital-finance-and-innovation/markets-crypto-assets-regulation-mica>; EUR. SEC. & MARKETS AUTH., *Press Release: ESMA Releases Last Policy Documents to Get Ready for MiCA*, *ESMA: NEWS: PRESS RELEASES* (Dec. 17, 2024), <https://www.esma.europa.eu/press-news/esma-news/esma-releases-last-policy-documents-get-ready-mica>.

⁶⁹ See Jeff Wilser, *supra* note 64.

innovation, investment, and institutional engagement. Companies that stay in the U.S. must devote significant resources to compliance, slowing progress and reducing competitiveness.⁷⁰

The amount of capital that has flowed into blockchain-based systems or other decentralization initiatives is not yet that significant, possibly in large part due to the lack of regulatory clarity. Venture capitalists and institutional investors favor business and infrastructure investments that are subject to predictable policies with clear enforcement standards. How effectively U.S. policymakers reduce inconsistencies will determine whether the nation remains a global innovation leader or cedes ground to more agile competitors. Clear rules encourage institutional expansion, while persistent ambiguity discourages investment. Ultimately, regulatory outcomes will shape the stability of digital asset ecosystems and the U.S.'s appeal as a hub for emerging technologies.⁷¹

Some states might try to adopt interstate accords or model laws for consistent regulation. Absent federal coordination, however, fragmented rules are likely to persist under state-level banking or money transmission oversight.⁷² The systems of federalism and common law inherent in the U.S.'s structure of government can foster healthy competition of law and jurisprudence among the states and help to identify best practices. Nevertheless, as history shows, this can also incentivize regulatory arbitrage, introduce systemic risk, lead to reduced consumer protections, and create inefficiencies by involving multiple layers of bureaucracy.⁷³

Starting in 2022, for example, the New York State Attorney General—citing a lack of federal clarity—began actively enforcing state blue sky laws against digital asset exchanges, alleging fraud and unregistered securities offerings.⁷⁴ If the SEC under new leadership can strike a balanced approach, states might scale back their own enforcement.⁷⁵ If, however, New York or other states view the SEC (either alone or together with other federal regulators) as not doing enough to protect investors and pursue enforcement against digital asset- and blockchain-related fraud and market manipulation, then those states might be poised to pursue more aggressive enforcement or regulatory reform under their blue sky laws.

⁷⁰ See Joseph Galasso, *supra* note 63, at 1399-1400; Tom Blackstone, *2024 Cryptocurrency Adoption and Sentiment Report*, SECURITY.ORG: DIGITAL SEC. (Sep. 26, 2024), <https://www.security.org/digital-security/cryptocurrency-annual-consumer-report/>; Yaya Fanusie, *America Is Missing a Big Opportunity on Blockchain*, FOREIGNPOLICY.COM (Jul. 17, 2023), <https://foreignpolicy.com/2023/07/17/cryptocurrency-blockchain-us-digital-finance-technology-regulation/>; Mike Knapp, *The United States is Behind the Curve on Blockchain*, WAR ON ROCKS: COMMENTARY (Aug. 30, 2022), <https://warontherocks.com/2022/08/the-united-states-is-behind-the-curve-on-blockchain/>.

⁷¹ If the new Congress or the incoming Trump administration fail to refine federal policy to foster innovation and competition, the U.S. risks falling even further behind other nations. The lack of uniformity across various states—as well as under federal law and regulation—makes business legal and compliance functions increasingly complex and difficult, promotes regulatory uncertainty, and threatens the global competitiveness of U.S. industries. Given the transformative potential of these technologies across a wide array of conventional industries, establishing clear federal policy within the next year or two could potentially be vital to long-term success of the U.S. economy and potentially even the U.S. dollar.

⁷² See U.S. GOV. ACCOUNTABILITY OFF., *Congressional Report on Blockchain in Finance: Legislative and Regulatory Actions Are Needed to Ensure Comprehensive Oversight of Crypto Assets*, at 8, 33, 42 (Jun. 2023), <https://www.gao.gov/assets/gao-23-105346.pdf> [hereinafter 2023 GAO Report on Blockchain in Finance]; see generally Joseph Jasperse, *50-State Review of Cryptocurrency and Blockchain Regulation*, PENN WHARTON: STEVENS CTR. FOR FIN. INNOVATION (rev. Jun 23, 2022), <https://stevenscenter.wharton.upenn.edu/publications-50-state-review> (highlighting the different state regimes for licensing and regulation that affect crypto).

⁷³ See 2023 GAO Report on Blockchain in Finance, *supra* note 72, at 52-56.

⁷⁴ See Mercedes Kelley Tunstall & Nikita Cotton, *Current State of Crypto Regulation in New York*, BLOOMBERG L.: PRACTICAL GUIDANCE (Apr. 2023), <https://www.bloomberglaw.com/external/document/X291VA5G000000/banking-professional-perspective-current-state-of-crypto-regulat>.

⁷⁵ Although these state efforts help to maintain market integrity, they can also stifle innovation and create an additional layer of uncertainty for businesses.

Aside from securities laws, some industry proponents favor a unified federal framework that preempts divergent state money transmission rules to which many digital assets service providers can be subject.⁷⁶ Such an approach could cut compliance costs and enhance U.S. competitiveness in digital assets. Still, states might challenge federal laws that intrude on traditionally state-reserved powers.⁷⁷

Regardless of the approach, federal policymakers must act decisively to clarify regulatory ambiguities and preserve U.S. leadership in finance and tech. Any federal regime should be flexible, balancing innovation with consumer protections, systemic risk management, and national security. Federal efforts must not only provide much-needed clarity but also harmonize the need for adequate consumer protections, systemic risk management, and the protection of U.S. economic and national security interests. Perhaps just as importantly, they also must respect the core principles of decentralization and permissionless innovation that underpin blockchain and distributed ledger technology. If the U.S. does not achieve significant strides in this arena, then participants in these industries will likely continue to offshore operations, and the U.S. will fall further behind jurisdictions like the EU and Singapore, which have already established comprehensive frameworks.

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Go on to read [Part 3](#) of DLx Law's [2025 Industry Guide for Lawyers & Dev Teams](#). [Part 3](#) examines changing political tides as the United States enters a new era of governance, identifying how congressional gridlock, geopolitical tensions, and shifting priorities in the White House affect the future of digital assets, decentralized systems, and emerging technologies

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⁷⁶ See Todd White & Ralph Benko, *Federal Preemption of State Money-Transmitter Licensing Would Be Great Policy*, COINDESK: OPINION (Jun. 14, 2024), <https://www.nasdaq.com/articles/federal-preemption-of-state-money-transmitter-licensing-would-be-great-policy>.

⁷⁷ Any potential federal regulatory regime covering money transmission or digital asset-related services would likely face legal challenges by the states if it fails to appropriately balance the federal government's interests with states' interests in retaining oversight over conventionally state-reserved powers. The need to balance between interests in federal preemption and states' rights arises from the U.S. system of dual sovereignty. The Supremacy Clause (U.S. CONST. ART. VI, CL. 2) grants federal laws precedence, whereas the Tenth Amendment reserves powers to the states. States argue their autonomy allows tailored consumer protections and risk management, and federal preemption advocates emphasize uniform standards to reduce fragmentation and boost global competitiveness. Effective legislation must delineate federal authority while respecting state regulatory roles.