

CQ NEWS

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Fall Legislative Preview: Cryptocurrency regulation

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Overview

At the urging of President Donald Trump and the cryptocurrency industry, Congress passed a stablecoin bill in July that the president signed into law the next day ([PL 119-27](#)).

The stablecoin bill, which was **the Senate measure**, set up a regulatory framework for stablecoins, a digital token tied to a reserve currency, in this case the U.S. dollar.

Lawmakers return from recess with ambitions to enact a wider cryptocurrency bill that would establish rules to operate and regulate digital asset markets. The House, which opted to follow the Senate's lead on the stablecoin bill, appears to be doing the driving on the market structure bill.



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The House in July **passed**, 294-134, a bill dubbed the Digital Asset Market Clarity Act (**HR 3633**), commonly referred to as the Clarity Act. The measure is meant to complement the stablecoin bill, but cryptocurrency proponents see it as more important because it would design the regulatory playing field for all digital assets.

The cryptocurrency industry, having spent about \$140 million in last year's campaign, says appropriate regulation is needed to ensure the U.S. stays at the forefront of a technology that could transform global finance and payment systems.

FiscalNote Holdings Inc., the parent company of CQ and Roll Call, is evaluating the use of digital currencies as a strategic reserve asset for its corporate treasury.

Status

The House passage of a market structure bill means the initial post-recess movement will be in the Senate.

The Senate Banking Committee released **a discussion draft** of its market structure bill in July. Chairman **Tim Scott**, R-S.C., along with Digital Assets Subcommittee Chair **Cynthia Lummis**, R-Wyo., and Sens. **Bill Hagerty**, R-Tenn., and **Bernie Moreno**, R-Ohio, put out both the **35-page text** and a related **request for information** to guide their work.

The Senate and House bills would define which digital assets are commodities and which are securities and also would sort out regulatory oversight between the Securities and Exchange Commission and the Commodity Futures Trading Commission.

The Senate draft differs from the House bill in at least one key respect. It uses the concept of “ancillary assets,” distinguishing it from the

House bill that defines cryptocurrencies as digital commodities. The Senate measure describes ancillary assets as commercial and interchangeable, but not as securities.

Issuers could self-certify to the SEC that their tokens aren't securities, although it would leave the agency room to rebut the assertion. The bill would exempt from SEC registration ancillary asset offerings or sales that do not exceed \$75 million annually over four years.

Liz Davis, a partner at Davis Wright Tremaine, said there's some industry resistance to the ancillary assets approach.

"That's the debate I see happening — whether that ancillary asset framework will survive," Davis said. "It will be interesting to see if [the Senate Agriculture Committee] picks up on the ancillary asset category."

The Senate's request for information contained dozens of questions regarding regulatory jurisdiction over digital assets, investor protection, trading venues and market infrastructure, custody, illicit finance, banking, innovation and federal preemption of state regulations.

"That gave me pause and made me think we could see a substantial rewrite of a [House] bill that was pretty far along," said Cheryl Isaac, a partner at the law firm K&L Gates. "Given how far the [Senate] discussion draft is from the Clarity Act gives you a sense of how much work might need to be done."

Outlook

Lummis is confident that work can be done quickly — at least by Senate standards.

“We will have market structure to the president’s desk before the end of the year,” Lummis said last month. “I hope it’s before Thanksgiving.”

She said the House legislation would be the base bill with a Senate manager’s amendment wrapped around it reflecting the Senate’s input.

“We also want to honor as much of the House’s work as we can on Clarity because they had a robust bipartisan vote, and we don’t want to disrupt that very much,” Lummis said. “So, really, Clarity will probably end up what passes, but Clarity tweaked by [the Senate].”

Many Democrats who have voted against crypto bills have done so because they see the legislation as enabling Trump’s personal crypto conflicts of interest. His family owns stakes in crypto ventures.

“That’s a stumbling block to get more Democrats to vote for it,” said House Agriculture ranking member [Angie Craig](#), D-Minn., who voted for the House market structure bill.

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Issues

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Bills

HR3633

A bill to provide for a system of regulation of the offer and sale of digital commodities by the Securities and Exchange Commission