

Crypto To Take On Rulemaking Push, And Pushback, In 2026

By **Aislinn Keely**

Law360 (January 2, 2026, 12:03 PM EST) -- The Trump administration's pledge to make the U.S. the "crypto capital of the world" invigorated a wave of crypto policy efforts from Congress and federal agencies last year, but experts say 2026 will be about sorting the devils in the details.

While the White House and crypto industry participants are pushing for Congress and federal agencies to expedite clear rules of the road for digital assets, experts told Law360 that untangling the specifics will be a monumental undertaking on par with Dodd-Frank Act reforms — and it's likely litigation is going to follow.

Here's a preview of what lawmakers and regulators are looking to get done over the next year when it comes to crypto, and the factors that could complicate those agendas.

The Elephant in the Room

Looming over the entirety of the crypto policy conversation is Congress' unfinished bill to regulate digital asset markets. Though the House managed to pass its Clarity Act in July and Senate lawmakers previously expressed hope of passing their own product before year's end, Senate Banking Committee Chairman Tim Scott, R.-S.C., said in December that the Senate would push the work to 2026 to accommodate ongoing bipartisan negotiations.

The market structure bill is crypto's "elephant in the room" for 2026, said Lewis Cohen of Cahill Gordon & Reindel LLP.

"Its passage or lack thereof, or how it works, will drive much of the 2026 conversation," he said. "Either in its absence, because regulators will have to respond to not having clear congressional mandates, or its presence, in terms of not only setting out rules, but, of course, all of the cascading rulemaking."

So far, the Clarity Act and the Senate's discussion drafts contemplate giving the U.S. Commodity Futures Trading Commission most of the jurisdiction over crypto markets, envisioning a licensure regime for issuing digital assets and facilitating their trading. The U.S. Securities and Exchange Commission would maintain limited oversight of securities transactions involving digital assets under the current versions of the bill.

Scott's office has continued to put out statements indicating that lawmakers are still engaged in negotiations on the bill even in the waning legislative session, and experts broadly said that delivering rules for crypto markets appears to remain a priority for Congress.

Sen. Cynthia Lummis, R.-Wyo., said during a December conference that ethics language and the appointment of Democrats to federal derivatives and securities agencies would **likely be key** to getting the bill across the finish line, and she anticipated having to "cajole the White House" on those points to appease Democrats. Democrats in both chambers have pushed for heightened consumer protections and language limiting public officials' ability to profit from the industry, particularly in light of the Trump family's ties to crypto ventures.

In addition to brokering compromises on some of Democrats' flagship concerns, Senate lawmakers will also still have to reach an agreement on how to address decentralized assets, which remains a

thorny issue, Cohen said.

Experts said whether a bill passes remains something of a toss-up for now, but the odds decrease substantially if the bill isn't through both chambers by spring.

"The only thing we can perhaps say with some certainty is that there is some point in the spring — is that March, April, maybe May the latest — that if we don't have something by then, the attention span will really turn to the midterm elections," said Cohen.

Those looming midterm elections could also influence negotiations over lingering sticking points to take a more partisan turn, said Anthony Valenzuela of Davis Wright Tremaine LLP, who previously served as general counsel and global head of government relations and legislative affairs for crypto exchange OKX.

It's also important to keep in mind that lawmakers are facing another shutdown deadline in January, Valenzuela said, and appropriations bills "always go to the front of the line."

Where the Rubber Meets the Road

But if Congress does get a market structure bill done, experts predicted the subsequent rulemaking burden to be similar to that of the decadelong effort agencies undertook to implement the Dodd-Frank Act of 2010.

The various proposals to regulate crypto markets all contemplate handing the bulk of digital asset oversight to the CFTC, and Daniel Ullman of Orrick Herrington & Sutcliffe LLP, who spent 16 years at the derivatives regulator, told Law360 that rulemaking is where lawmakers' framework becomes a practical reality.

"As we turn to 2026, assuming that the bill is passed, there's going to be a tremendous amount of rulemaking happening, which is where the rubber hits the road at the Commission, and it's going to be extremely similar to how swaps after Dodd-Frank were regulated, and the amount of rules and the amount of time that's been taken to do that," he said.

As for what comes first, Gabriel Rosenberg of Davis Polk & Wardwell LLP said the immediate focus will likely be both setting a registration regime for crypto firms and hammering out definitional rules that clarify what type of conduct or business needs to register.

"Much like in Dodd-Frank, there were all of these types of products on the edges [that] people didn't really know how to classify, or did not all agree how to classify, and that, I think, is going to be the same thing here," he said.

The SEC and CFTC will likely have to coordinate more closely than ever before to untangle where their jurisdictions begin and end, experts said.

Existing Authority

But as the bill remains unfinished, both the CFTC and SEC have committed to using their existing authority to provide more clarity for digital assets.

At the SEC, Chairman Paul Atkins has said he hopes to issue a so-called innovation exemption some time in January, though experts said the details remain murky. While it's not clear which rules and products the exemption might address, Atkins said during a June SEC roundtable that he envisioned a framework "that would expeditiously allow registrants and non-registrants to bring on-chain products and services to market."

Cohen said it would be helpful if the innovation exemption describes what it means to be truly decentralized.

"I'll be looking to the innovation exemption to drive a thoughtful dialogue about, at what point is this just a centralized business model with some decentralization sauce sprinkled on top, or is it really peer-to-peer activity that appropriately deserves to be carved out of regulations that simply don't

apply if there are no intermediaries," he said.

Atkins has articulated a clearer vision for a so-called token taxonomy coming some time in 2026. In November, the chairman **previewed** his plans to "draw clear lines" about which crypto transactions the SEC doesn't regulate. At the time, he floated possible categories beyond his agency's remit, including digital commodities or network tokens, digital collectibles and digital tools.

The following month, Atkins told reporters at the Blockchain Association's Policy Summit that he anticipated first tackling the innovation exemption before turning to the taxonomy.

The SEC also took a significant step toward integrating tokenized securities into markets when it provided a December **no-action letter** allowing the Depository Trust & Clearing Corp. to launch a service that would put existing "highly liquid" assets on the blockchain, like exchange traded funds tracking major indices and U.S. Treasuries.

Statements from both Atkins and Commissioner Hester Peirce made clear that the structure of DTCC's service isn't the only path forward, and the agency intends to review other bids to tokenize securities in the new year.

Meanwhile, the CFTC released a number of statements in 2025 as part of then-acting Chairman Caroline Pham's crypto sprint. The CFTC issued guidance enabling spot crypto trading on regulated derivatives markets, as well as a pilot program permitting platforms to use tokenized collateral, placing assets currently approved for use as collateral on the blockchain.

Cheryl Isaac of K&L Gates told Law360 that both of these developments appeared to be starting points for the CFTC, and she's expecting additional guidance on both topics.

However, the agency is facing an impending transition now that Pham's successor, Michael Selig, has been confirmed as chairman.

Given Selig's experience on the SEC's Crypto Task Force, experts said there's good reason to think he'll chart a similar path. However, as Orrick's Ullman noted, it's always a possibility that a new chairman will want to start fresh with their own policies.

From Offense to Defense

The industry itself in 2026 will also have to adjust to crafting and defending the rules it wants instead of attacking those it finds unworkable. While the past few years saw crypto firms repeatedly take regulators to court over their rulemaking, experts said crypto firms may soon find themselves back in court playing defense alongside regulators.

Judd Littleton of Sullivan & Cromwell LLP, who helped crypto industry participants **successfully challenge** the U.S. Securities and Exchange Commission's expanded dealer rule, said during a December panel at the Blockchain Association's Policy Summit that "in a way it's easier to fight than to be in the driver's seat."

The new year will challenge the industry to "think a bit more programmatically" about how to shape rules that achieve consensus rather than simply tearing down rules they feel are ill-suited to emerging technology, he added.

As those rules come to pass, Littleton and others said they're expecting a new set of lawsuits challenging regulators.

"I think if formal rules that are friendly to the digital assets industry come out, I think we can expect that there's going to be litigation from the other side and from folks that maybe don't want that kind of innovation," said Littleton at the event.

A battle is already shaping up in SEC comment letters, where Citadel Securities and advocates of decentralized systems clashed over whether autonomous software projects should be treated as intermediaries. Citadel Securities and others have argued so-called DeFi shouldn't get a compliance pass just because the technology might struggle to comply with traditional registration and reporting

requirements.

DeFi Education Fund Executive Director Amanda Tuminelli said during the Blockchain Association Policy Summit that traditional finance will "line up to sue" when they disagree with rules or exemptions issued to crypto. The Citadel Securities letter "makes it abundantly clear that Citadel is getting ready to sue."

"It would be odd for us to write amicus briefs on behalf of the SEC, but it could be the direction that we are going," she said.

In response to Tuminelli's comments, a Citadel Securities spokesperson told Law360: "We're committed to engaging constructively and transparently with the SEC and other market participants to realize the benefits of tokenization without sacrificing core investor protections and market safeguards, and we believe that the process will get us to the best outcomes for our markets and the investing public."

Stable Rules

Though market structure legislation is taking up much of the industry's attention, 2026 will also see banking regulators racing against the clock to implement the first pieces of Congress' framework for payment stablecoins, the Genius Act.

Specifically, these are the registration regimes and standards for businesses looking to issue the tokens, which use reserve assets to fully back the supply. The bill directs regulators to promulgate all necessary rules "not later than one year after the enactment," and deliver a report to Congress on the rules it intends to implement within 180 days of the enactment. The bill itself takes effect the earlier of either 120 days after banking regulators finalize rules or 18 months after its July 2025 signing.

The Federal Deposit Insurance Corp. appears to be the furthest along, issuing a **notice** of proposed rulemaking in December on establishing an application regime for subsidiaries of insured depository institutions. The U.S. Treasury Department has also put forth **advanced notices** calling for input on its Genius Act implementation.

The Office of the Comptroller of the Currency has perhaps the heaviest lift, since it will oversee nonbank entities and uninsured national banks seeking to issue stablecoins. Crypto firms **may opt** for federal oversight for the ease of operating across 50 states and the ability to hold assets in custody, as opposed to the state pathway the bill also provides.

The OCC already conditionally approved five crypto firms' request for national trust charters, to the ire of some banking industry participants, and more firms' applications are waiting in the wings.

Jason Gottlieb of Morrison Cohen LLP noted during a December panel at the Blockchain Association's Policy Summit that the Genius Act itself is only around 30 pages, "so there's a lot that may need to be filled in."

"You can see from the [comment] letters that there's going to be several battles that are shaping up for rulemaking here, because Genius, as legislation goes, is a little bit sparse," he said.

Chief among those battles is whether issuers or intermediaries of stablecoins will be able to offer interest or yields on the tokens.

Banks and banking groups have opposed offering yield on tokens, arguing that the statute prohibits issuers themselves from offering rewards in exchange for "holding, use, or retention" of their stablecoins. Crypto advocates argue the prohibition on paying yield is more limited, leaving room for issuers to offer rewards in other contexts and allowing intermediaries to pay yields for any use of the token.

Gottlieb also noted that regulators will have to discern how to treat so-called synthetic stablecoins, or those that use a mechanism other than fully backing their supply with reserves to maintain a consistent value. They'll also have to address what happens when stablecoins are issued by entities

that aren't defined as digital asset service providers in the law, like blockchain protocols or software interfaces.

Gottlieb said during the summit that he's expecting litigation over the issues to take years, and he personally falls on the side of the crypto industry's adherence to the plain text of the statute.

"These battles are just beginning," he said.

"We're going to see iterations of the battles when a proposed rule comes out, when a final rule comes out, and then again ... in [the U.S. Supreme Court's] October term 2032, so there's a lot of questions for OCC and Treasury to resolve."

Editing by Linda Voorhis.