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Crypto Policy Tracker

PHFintech: Crypto Policy Tracker

By [Chris Daniel](#), [Eric C. Sibbitt](#), [Dana V. Syracuse](#), [Josh Boehm](#), [Meagan E. Griffin](#), & [Dina Ellis Rockkind](#)

Key Takeaways:

1. The increased presence of pro-crypto members of Congress in the new session presents a significant opportunity for industry participants to actively shape legislation that could become law.
2. With debates centered around federal and state oversight, stablecoin bills could set the stage for a standardized regulatory framework for stablecoins.
3. The FIT21 bill introduces critical advancements in regulatory clarity for digital assets, offering insights into decentralization criteria, intermediary requirements, and how future legislation may evolve.

With the 119th Congress set to take office in January, we're here to keep you up to date on key developments in the fast-evolving landscape of crypto policy. As a reminder, each new Congress starts with a clean slate, meaning that all bills introduced in the prior session expire and must be reintroduced. Here is a look at some of the most significant crypto bills from the last Congress that could resurface in the coming legislative session.

Crypto's influence in recent elections is evident, with more crypto-friendly members of the incoming Congress than ever before. With Republicans soon to control Congress and the Executive Branch, the incoming Administration has promised to prioritize crypto-friendly policy and regulation, including plans to nominate new leadership at regulatory agencies, including at the SEC. In a recent statement, the President-elect expressed openness to exploring a national bitcoin reserve and Senator Cynthia Lummis (R-WY) introduced a [bill](#) advocating for the same.

During the transition, the Administration will have the opportunity to replace some of the current appointees with acting officials until permanent replacements are confirmed by the Senate. This tracker will focus on key Senate and House changes and provide updates on major crypto legislation introduced in the current Congress. By covering these developments, we aim to shed light on the evolving priorities of Congress and the new administration as they shape the regulatory landscape for digital assets. From new bills to leadership changes that affect oversight and decision-making, we will be monitoring all the crucial elements that could influence the future of crypto legislation in the U.S.

Senate and House Changes

Four key Congressional committees have jurisdiction over cryptocurrency legislation. The House Financial Services Committee and the Senate Banking Committee have authority over financial services issues, including oversight of the SEC, and the House and Senate Agriculture Committees oversee the CFTC.

- **Senate:** The Senate Banking Committee will be led by Tim Scott (R-SC) as Chairman and Elizabeth Warren (D-MA) as Ranking Member, while the Senate Agriculture Committee is expected to be chaired by John Boozman (R-AR), with Amy Klobuchar (D-MN) expected as the Ranking Member.
- **House:** With Patrick McHenry (R-NC) retiring, there will be a new Financial Services Committee chair, with Congressmen Andy Barr (R-KY), French Hill (R-AR), Bill Huizenga (R-MI), and Frank Lucas (R-OK) potentially considered for the position. Chairman GT Thompson (R-PA), who has been a strong supporter of crypto issues, will remain the Agriculture Committee Chair. If the new Administration chooses Rep. Thompson as the Secretary of Agriculture or another role in the Administration, the Republicans will have to determine who would fill the Agriculture Committee Chair position.

Stablecoin Legislation

Three main pieces of legislation on stablecoins have been introduced in the current Congress. These stablecoin bills will expire and must be reintroduced. The central issue in stablecoin legislation revolves around the balance of regulatory power between federal and state authorities.

- **H.R. 4766 - Clarity for Payment Stablecoins Act of 2023**
 - Sponsored by House Financial Services Committee Chairman Patrick McHenry (R-NC) and Rep. Ritchie Torres (D-NY).
 - Overview. Establishes a regulatory framework for the issuance and oversight of “payment stablecoins.” It defines the standards, requirements, and limitations for entities issuing stablecoins and clarifies how these digital assets will be treated under federal law.
 - Permitted Issuers. The following are permitted issuers of payment stablecoins.
 - *Subsidiaries of Insured Depository Institutions.* These are companies that are part of an insured bank or credit union, which must get approval to issue stablecoins by filing an application with the primary federal stablecoin regulator.
 - *Federal Qualified Nonbank Payment Stablecoin Issuers.* Nonbank entities that want to issue stablecoins at a federal level. They also need approval from the federal stablecoin regulator.
 - *State Qualified Payment Stablecoin Issuers.* These are nonbank entities that have been authorized by individual states to issue stablecoins.
 - Role of Federal and State Regulators. Federal regulators, including the Federal Reserve, have primary oversight for non-state-regulated issuers and are responsible for setting unified standards on capital, liquidity, and risk management requirements.
 - State agencies retain authority over state-chartered stablecoin issuers but must ensure these entities meet baseline federal standards.
 - Payment stablecoins would be neither securities nor commodities, nor subject to the jurisdiction of the SEC and CFTC.
 - Stablecoin issuers would be financial institutions under the Bank Secrecy Act subject to FinCEN regulation.
 - Passed 34-16 in the Financial Services Committee but faces challenges for House approval.
- **S. 4155 - Lummis-Gillibrand Payment Stablecoin Act**
 - Sponsored by Senators Cynthia Lummis (R-WY) and Kirsten Gillibrand (D-NY).
 - Overview. The bill seeks to establish regulatory standards for payment stablecoins, focusing on maintaining a stable value and supporting broad payment uses. It aims to define permitted issuers, set reserve requirements, and specify federal and state roles in oversight.

- Permitted Issuers. State trust companies can issue payment stablecoins up to \$10 billion, federal or state depository companies to create and issue payment stablecoins up to any amount.
 - Non-Depository Trust Companies. These are companies that do not take customer deposits but are licensed by state bank regulators to issue stablecoins. They must register with the Federal Reserve and can issue stablecoins if the total value of their stablecoins does not exceed \$10 billion
 - Depository Institutions. These are traditional financial institutions, like banks, that are authorized by either the OCC (for national banks) or state bank regulators. They must also receive approval from the Federal Reserve to issue stablecoins. This category includes banks or their subsidiaries that are insured and part of a larger bank holding company.
 - Federal and State Regulators. Federal regulators, including the Federal Reserve and the OCC, would oversee federally chartered stablecoin issuers.
 - Designates the state regulator as the primary regulatory authority for state trust issuers, but the state regulator must provide compliance reports to the Federal Reserve.
 - Federal and state agencies must coordinate to avoid regulatory overlap, and states retain the right to set higher standards for issuers within their jurisdiction.
 - Stablecoin issuers would be financial institutions, specifically a subset of bank, under the Bank Secrecy Act and anti-money laundering regulations would be directed by the Federal Reserve in consultation with FinCEN.
 - Bill was introduced in April of 2024. Provisions from this bill may get placed into the National Defense Authorization Act (NDAA), which must pass every year, although the exact timing for inclusion and passage is unknown.
- **Clarity for Payment Stablecoins Act of 2024**
 - Overview. Discussion draft released by Senator Bill Hagerty (R-TN), builds upon the *Clarity for Payment Stablecoins Act of 2023*, summarized above. This version grants states increased authority in regulating stablecoin issuers.
 - Enhanced State Role. The bill exempts issuers of less than \$10 billion in total stablecoin from federal regulation, allowing them to remain under the oversight of state regulators.
 - Issuers exceeding the \$10 billion threshold may seek a waiver from their applicable federal regulator to stay under state regulation.
 - Designates the Federal Reserve as the supervisor of issuers that are depository institutions and makes the OCC the supervisor of federally qualified nonbank issuers.
 - Stablecoin issuers would be financial institutions under the Bank Secrecy Act subject to FinCEN regulation.
 - Not yet introduced but expected to gain more support in the 119th Congress.

Market Structure Bill

Market structure bills aim to establish clear rules and frameworks for financial markets. In the context of digital assets, these bills seek to define regulatory boundaries and clarify the roles of agencies such as the SEC and CFTC.

We may see a new market structure bill introduced during the next Congress.

- **H. R. 4763 - FIT21 (Financial Innovation and Technology for the 21st Century Act)**
 - Sponsored by House Financial Services Committee and Agriculture Chairs Patrick McHenry (R-NC) and Glenn Thompson (R-PA), French Hill (R-AR), Dusty Johnson (R-SD), Warren Davidson (R-OH), Tom Emmer (R-MN), and others.

- Overview. A comprehensive regulatory framework for digital assets.
- Restricted Digital Asset. The SEC would regulate a digital asset as a security if its associated blockchain is functional but not decentralized.
- Digital Commodities. The CFTC would regulate a digital asset as a commodity if the blockchain, or digital ledger, on which it runs is functional and decentralized.
- Decentralization. The bill determines a digital asset to be decentralized, if, among other requirements, no person has unilateral authority to control the blockchain or its usage, and no issuer or affiliated person has control of 20% or more of the digital asset or the voting power of the digital asset.
- Permitted Payment Stablecoins. A form of payment that will maintain a stable value relative to a fixed monetary value. Can be overseen by the SEC or CFTC.
- Self-Certification. Any person may certify to the SEC that the blockchain system to which a digital asset relates is a decentralized system. The SEC then has 60 days to review and potentially reject this certification before the assets on such a system would be considered “digital commodities” subject to CFTC jurisdiction.
- Intermediaries. Requires digital asset intermediaries to register with the SEC or the CFTC, based on the type of digital asset in which it transacts, such as “restricted digital assets” with the SEC or “digital commodities” with the CFTC.
- Digital asset intermediaries would be subject to anti-money laundering laws and must comply as “financial institutions” under the Bank Secrecy Act.
- Stablecoin issuers would likely be subject to anti-money laundering regulations imposed by the CFTC or SEC in addition to rules issued by FinCEN.
- Passed overwhelmingly in the House 279-136 in May 2024, but failed to pass the Senate. Vice President-Elect JD Vance was reported to circulate a version of the FIT21 bill in the Senate. This bill is a significant step forward; some of the provisions will likely be included in future crypto legislation.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

Chris Daniel
1(404) 815-2217
chrisdaniel@paulhastings.com

Eric C. Sibbitt
1(415) 856-7210
ericsibbitt@paulhastings.com

Dana V. Syracuse
1(212) 318-6034
danasyracuse@paulhastings.com

Josh Boehm
1(212) 318-6033
joshboehm@paulhastings.com

Meagan E. Griffin
1(404) 815-2240
meagangriffin@paulhastings.com

Dina Ellis Rochkind
1(202) 551-1938
dinaellis@paulhastings.com

Paul Hastings LLP

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