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The Latest on Crypto Regulation: SEC Priorities and Congressional Market Structure Bills

Jason R. Outlaw, Drew G. Rolle, and Charlotte M. Bohn*

In this article, the authors outline how Congress's market structure proposals and the Securities and Exchange Commission's emerging token classification framework together signal a reset in U.S. crypto regulation as lawmakers and regulators move toward clearer oversight of digital assets.

The dramatic shift in U.S. digital asset policy has made 2025 an inflection year for crypto regulation. With the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act) now law, broad market structure bills, including the Digital Asset Market Clarity Act of 2025 (Clarity Act), advancing in both chambers of Congress, and the launch of the Securities and Exchange Commission's (SEC) Project Crypto and the Commodity Futures Trading Commission's (CFTC) Crypto Sprint, U.S. digital asset regulation has undergone an unprecedented—and for many a welcome—reset.

Equally important for digital asset market participants are the signals from regulators about how they plan to supervise and enforce regulations on crypto in the near, medium, and long term.

Emerging Digital Asset Legislative Frameworks

In July 2025, President Donald Trump signed the GENIUS Act into law, creating the first comprehensive U.S. legal framework for the supervision and regulation of payment stablecoins. The GENIUS Act's key features include clear custody, reserving, redemption, and operational requirements, as well as anti–money laundering/countering terrorist financing and sanctions screening obligations for stablecoin issuers. Since its passage, multiple regulators—including the Federal Reserve, the Office of the Comptroller

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of the Currency, the Department of the Treasury, and the Financial Crimes Enforcement Network—have begun rulemakings to implement the GENIUS Act.

House Activity

While the GENIUS Act was a landmark "first pillar" of U.S. crypto legislation, its scope is narrowly focused on payment stablecoins, leaving open numerous issues related to digital asset market structure and token classification. For much of 2025, Congress has been actively working on a "second pillar" of crypto legislation to address these issues.

In July, the House of Representatives, with bipartisan support, passed the Clarity Act, a comprehensive legislative framework for digital assets. A key feature is its differentiation between tokens that are "digital commodities" and tokens more like traditional securities. Under the Clarity Act, a token will be a digital commodity subject to CFTC jurisdiction where its value is derived from the use of a blockchain system and intrinsically linked to that system's operation (e.g., tokens used for governance, payments, access, or validation). Excluded from that category, however, are assets that are, or function as, traditional securities and securities derivatives, including instruments conferring equity, creditor status, or other economic rights over a token issuer.

Senate Activity

The U.S. Senate is also considering multiple market structure bills in the Agriculture and Banking Committees. Following the reopening of the federal government after last year's shutdown, bipartisan support emerged for the Senate Agriculture Committee's draft market structure legislation. Like the Clarity Act, the bill defines "digital commodities" subject to CFTC jurisdiction, but it is scoped more broadly to include "any fungible digital asset that can be exclusively possessed and transferred, person to person, without necessary reliance on an intermediary, and is recorded on a cryptographically secured public distributed ledger." Also like the Clarity Act, the Agriculture Committee draft excludes securities and digital assets that are functionally equivalent to securities futures, security-based swaps, and options on securities.

Finally, the Senate Banking Committee's September 2025 draft of the Responsible Financial Innovation Act of 2025 (RFIA) introduces yet another market structure framework, including a token classification framework with a unique category of "ancillary assets" that are neither digital commodities nor digital securities. This hybrid category would cover tokens that are initially sold to investors as part of an investment contract with an issuer but do not represent—and are decoupled from—the investment contract's promises. The investment contract transaction triggers SEC oversight for the issuance and corresponding disclosure requirements related to the ancillary asset. However, the ancillary asset itself would not be a security, and secondary-market trading of those assets would not qualify as securities transactions.

Regulators' Emerging Approaches to Digital Asset Oversight

Against this legislative backdrop, financial regulators have begun previewing how they intend to administer the next phase of digital asset regulations even as the crypto industry awaits broader congressional action. Just recently, SEC Chairman Paul Atkins outlined the SEC's ongoing efforts to craft a rules-based, classification-driven regulatory framework informed by the pending market structure legislation and tailored "to complement, not replace, Congress's critical work."

Citing the pending market structure frameworks, Atkins outlined what he views as the SEC's current "token taxonomy," which aligns in many ways with the pending market structure bills and is based in part on the work completed recently by SEC Commissioner Hester Peirce's Crypto Task Force. According to Atkins, three categories of digital assets are, in his view, not securities:

- *Digital Commodities and Network Tokens*. Drawing directly from the Clarity Act's "digital commodity" definition, Atkins described these assets as "intrinsically linked to and deriv[ing] their value from a programmatic operation of" a functional and decentralized crypto system, not "from the expectation of profits arising from the essential managerial efforts of others."
- *Digital Collectibles*. Also consistent with the Clarity Act, Atkins described digital assets designed to be collected

or used to represent rights in music, art, trading cards, games, memes, and other collectibles as "not expecting profits from the essential managerial efforts of others," and therefore not securities.

- *Digital Tools*. While not expressly defined in pending legislation, Atkins stated that digital assets with "practical functions," such as membership, tickets, credentials, title, and identity badges, likewise do not involve expectations of profits from managerial efforts and are not securities.

Continued Enforcement Priorities

Consistent with each of the market structure proposals, Atkins highlighted that securities "however represented, remain securities."

Labeling something a token does not "exempt it from the current securities laws" where it has all the hallmarks of a security or, in the case of tokenized securities, is simply the digital representation of who owns a security. In what appears to be an acceptance of the RFIA's unique "ancillary assets" framework, Atkins explained that while many crypto assets may fall outside the definition of a security under his taxonomy, some may be part of or subject to an investment contract, prompting SEC oversight at least initially. But "once the investment contract can be understood to have run its course, or expires by its own terms," Atkins explained that trading in the token should not be considered a securities contract simply because it was first issued as part of one.

Accompanying the announced crypto classification framework was a commitment that enforcement of the anti-fraud provisions in the digital asset markets would continue. Atkins emphasized that the framework is not a "promise of lax enforcement at the SEC." Fraud remains fraud, and the SEC will aggressively pursue actors who misuse investor funds or engage in deceptive practices.

While the framework seeks to provide clarity and promote integrity for compliant innovators and investors, it reinforces the SEC's core mission: protecting investors. And where tokens constitute commodities, Atkins underscored that the CFTC's anti-fraud and anti-manipulation authority will similarly be used to pursue misconduct in crypto asset trading.

In Summary

- Congress is advancing multiple proposals to define digital commodities and clarify securities oversight,
- The SEC is previewing a rules-based token taxonomy aligned with key legislative principles, and
- Anti-fraud enforcement by both the SEC and CFTC will continue across digital asset markets.

Note

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