

Issue Update

The digital asset market includes a range of instruments – from speculative and price volatile cryptocurrencies (e.g., bitcoin and ether), to stablecoins backed by a collection of assets (e.g., USDC and Tether), to digital representations of customer bank deposits on a blockchain, to central bank digital currencies (CBDC). Stablecoin and CBDC are covered in separate briefings.

As of December 2024, the total value of cryptocurrencies, including stablecoins, stands at around \$3.6 trillion, besting its previous peak of \$3 trillion in November 2021 and recovering from a recent low of about \$1 trillion in the first half of 2022. In 2022, the drop in cryptocurrency valuations coupled with risky, highly leveraged, and largely unregulated business models resulted in some digital asset companies becoming insolvent, wiping out some customers and leaving others frozen out of accounts they thought were protected.

There is currently no comprehensive regulatory framework that establishes guidelines for risk management and consumer protection in the digital asset market. In May 2024, the House passed the Financial Innovation and Technology for the 21st Century Act (FIT21) with a large bipartisan margin, but it was not taken up by the Senate. The bill attempts to settle the question of regulatory jurisdiction between the CFTC and SEC, ultimately giving the CFTC greater authority to regulate certain types of cryptocurrencies. In July 2023, the House Financial Services Committee passed a bill out of committee to regulate stablecoin issuers, but it did not advance further.

In March 2022, the SEC issued Staff Accounting Bulletin 121 (SAB121), which prescribed that an entity responsible for safeguarding cryptocurrency assets for platform users must present a liability on its balance sheet at fair value to reflect that obligation, as well as a corresponding asset. This accounting treatment effectively precludes banks from offering digital asset custody at scale since placing the value of client assets on balance sheet will impact prudential requirements such as capital, liquidity, and other mandates. A Congressional Review Act resolution that would repeal SAB 121 passed both the House and Senate on a bipartisan basis in May 2024 but was ultimately vetoed by President Biden.

Why it Matters To Your Community

There is significant regulatory uncertainty in the market today and an uneven application of existing rules. Banks are evaluating ways to safely and responsibly allow their customers to buy, sell, hold, and use digital assets through their existing banking relationships, primarily focusing on the ability to provide custody services. The Fed, OCC, and FDIC have urged extreme caution and are taking a case-by-case approach to review bank activity in digital assets, which is causing banks to move more slowly into digital asset markets compared with unregulated crypto companies creating an un-level playing field and an environment ripe for fraud, risk, and consumer harm.

Recommended Action Items

Urge Congress and Regulators to apply the principle of “same activity, same risk, same regulation” to digital asset activities, assuring that consumers will be equally protected whether they choose to access these markets through a bank or a non-bank.

Urge Congress and Regulators to clarify that it is generally permissible for banks acting in a safe and sound manner to perform certain digital asset activities, such as the provision of custody services, and repeal Staff Accounting Bulletin 121 (SAB 121). Consumers who choose to access these markets are best served when they can do so through fully regulated banks that are subject to rigorous oversight and consumer protection requirements.