

CRYPTO MEETS COMMERCIAL LAW: NATIONAL POLICY AND UCC ARTICLE 12'S FRAMEWORK FOR DIGITAL ASSETS

Presented to Early Warning Services

May 20, 2026

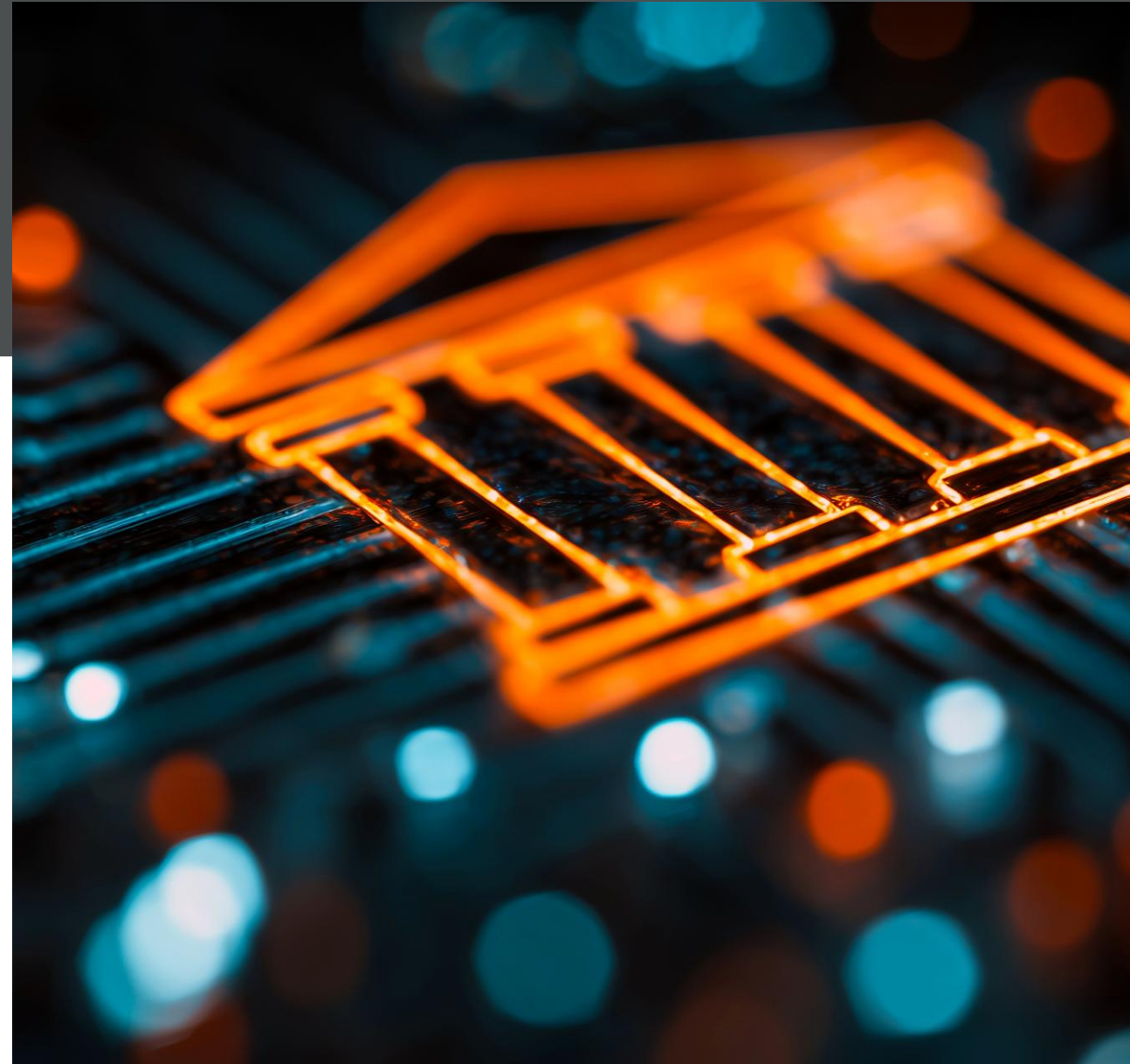


01

Crypto Regulatory Policy – History and Context

History and Context – Prior Administrations

- “Most Crypto Assets are Securities” – SEC Chair Gary Gensler
- Broad application of *Howey* test
- Regulation by Enforcement
- Many actions focused on intermediaries as unregistered actors
- Varying state approaches
- Beginning to see some differentiation – CFTC and commodities tokens



History and Context – 2025 Forward

January 2025 - Executive Order 14178 - Strengthening American Leadership in Digital Financial Technology

- “support the responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy”
- Supporting lawful private use, development and participation in crypto
- Increasing regulatory clarity
- Encouraging dollar-backed stablecoins
- No US Central Bank Digital Currencies (CBDCs)



History and Context – 2025 Forward

Regulatory Alignment and “Project Crypto”

- SEC Chair Paul Atkins – “American Leadership in the Digital Finance Revolution” - Washington D.C.; July 31, 2025
 - Digital Assets as continuation of a tradition of financial market innovation
 - “Despite what the SEC has said in the past, most crypto assets are not securities.”
 - “a key priority of mine will be to establish—as swiftly as we can—a regulatory framework for distributions of crypto assets in America.”

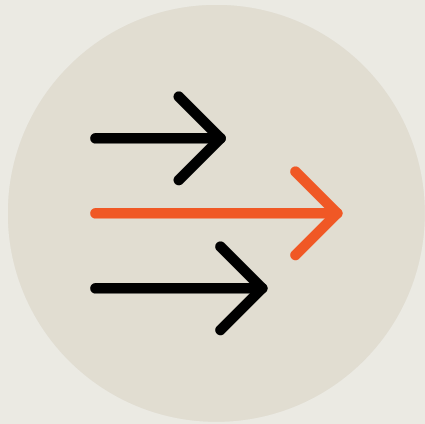


Project Crypto – Key Tenets/Objectives



- ✓ Move off-chain US financial markets on-chain
- ✓ Broader custody options (including self-custody wallets)
- ✓ Allowing decentralized networks (“protecting pure publishers of software code”)
- ✓ “Super-App” streamlining licensing for securities intermediaries across multiple product lines (including non-security assets)
- ✓ Onshoring crypto assets
- ✓ Fostering innovation; safe harbors and speed to market

Agency Action – Project Crypto Implemented



- ✓ Increasing harmonization between SEC and CFTC
- ✓ Resolution of many enforcement actions and pivot from regulation by enforcement
- ✓ Retraction of prior guidance and statements
- ✓ No Action relief
- ✓ New Guidance (generally aligned with Project Crypto tenets)
- ✓ Regulatory Harmonization

Key New Guidance

SEC

Clarifying guidance that certain activities do not implicate securities laws

- Liquid Staking
- Stablecoins
- Crypto Mining
- Meme Coins

SEC/CFTC MOU

March 11, 2026

Securities and Exchange Commission (SEC) Chairman Paul S. Atkins and Commodity Futures Trading Commission (CFTC) Chairman Michael S. Selig signed a Memorandum of Understanding (MOU) to guide coordination and collaboration on issues of shared regulatory concern

SEC/CFTC Joint taxonomy of digital assets

March 23, 2026

RIN 3038-AF67 Application of the Federal Securities Laws to Certain Types of Crypto Assets and Certain Transactions Involving Crypto Assets

Joint Taxonomy of Digital Assets



- Distinguishes 5 types of digital assets
- Based primarily on economic features (or lack thereof) and functionality
- Not “form or label”
- Notes distinction between underlying instrument and methods of distribution (which may be Investment Contracts)
- Speaks only from the federal regulated securities/commodities point of view

Joint Taxonomy of Digital Assets

Digital Commodities

Crypto asset that is intrinsically linked to and derives its value from the programmatic operation of a crypto system that is “functional” as well as supply and demand dynamics, rather than from the expectation of profits from the essential managerial efforts of others.

No intrinsic economic properties or rights, such as generating a passive yield or conveying rights to future income, profits, or assets of a business enterprise or other entity, promisor, or obligor – i.e., no “economic characteristics of a security”

Cited examples:

Aptos (APT); Avalanche (AVAX); Bitcoin (BTC); Bitcoin Cash (BCH); Cardano (ADA); Chainlink (LINK); Dogecoin (DOGE); Ether (ETH); Hedera (HBAR); Litecoin (LTC); Polkadot (DOT); Shiba Inu (SHIB); Solana (SOL); Stellar (XLM); Tezos (XTZ); and XRP (XRP)

Joint Taxonomy of Digital Assets

Digital Collectables

Crypto asset that is designed to be collected and/or used and may represent or convey rights to artwork, music, videos, trading cards, in-game items, or digital representations or references to internet memes, characters, current events, or trends, among other things.

No intrinsic economic properties or rights, such as generating a passive yield or conveying rights to future income, profits, or assets of a business enterprise or other entity, promisor, or obligor – i.e., no “economic characteristics of a security”

Cited examples:

CryptoPunks, Chromie Squiggles, Fan Tokens, WIF, and VCOIN

Joint Taxonomy of Digital Assets

Digital Tools

Crypto asset that performs a practical function, such as a membership, ticket, credential, title instrument, or identity badge. Commonly issued for use in connection with crypto systems and are designed to perform practical functions within such systems; value is derived from their practical functionality.

No intrinsic economic properties or rights, such as generating a passive yield or conveying rights to future income, profits, or assets of a business enterprise or other entity, promisor, or obligor – i.e., no “economic characteristics of a security”

Cited examples:

Ethereum Name Service domain names and CoinDesk’s ‘Microcosms’ NFT Consensus Ticket

Joint Taxonomy of Digital Assets

Stablecoins

Crypto asset that is designed to maintain a stable value relative to a reference asset.

- GENIUS Act relates to a subset of “payment stablecoins”
 - Prohibition on interest or yield to the permitted stablecoin holders (whether in cash, tokens, or other consideration) solely in connection with the holding, use, or retention of the payment stablecoin.
 - Payment stablecoins issued in compliance with the GENIUS Act are statutorily excluded by the Act from the definition of “securities”.
- Stablecoins other than payment stablecoins issued by a permitted payment stablecoin issuer may meet the definition of “security” depending on the facts and circumstances.

Joint Taxonomy of Digital Assets

Digital Securities

A financial instrument enumerated in the definition “security” that is formatted as or represented by a crypto asset, where the record of ownership is maintained in whole or in part on or through one or more crypto networks.

“

A security is a security regardless of whether it is issued, or otherwise represented, offchain or onchain.

”

“

All devices and instruments that have the economic characteristics of a security are securities regardless of format or label.

”

Joint Taxonomy Guidance – Other Issues



- Certain proof-of-work protocol mining and staking activities do not involve the offer and sale of securities
- Issuance of staking receipt tokens in connection with staking non-security crypto does not involve the issue or sale of securities
- Offer or sale of a Redeemable Wrapped Token that is a receipt for a non-security crypto asset that is not subject to an investment contract, in the manner and under the circumstances described in this release, does not involve the offer and sale of a security
- Certain airdrops do not involve issuance and sale of security (no monetary investment)

02

US Regulation of Stablecoins – GENIUS Act

GENIUS Act

“Guiding and Establishing National Innovation for U.S. Stablecoins Act” or GENIUS Act

- “An Act [t]o provide for the regulation of payment stablecoins, and for other purposes”
- S.1582 – Republican-sponsored bill (Sen. Hagerty (TN), cosponsor Sens. Lummis (WY), Scott (SC), Sullivan (AK), Moreno (OH), and Ricketts (NE))
- Passed with bipartisan support (68-30 in Senate; 308-122 in House)
- Became law (PL 119-27) on 7/18/25



GENIUS Act Overview – Policy Points/Clarifications



- Payment Stablecoins are not Securities or Commodities
- Leveraging and Expanding Existing Bank Regulatory Authority
- Explicitly reserves existing authority for banks as unimpacted by the Act
- State Bank Subsidiary Preemption – permissible money transmittal activities
- Exceptions – Personal and Secondary Market transactions, Repatriation
 - the direct transfer of digital assets between two individuals acting on their own behalf, without an intermediary, i.e., P2P
 - Self-custody transactions involving a software or hardware wallet
 - any transaction involving the receipt of digital assets by an individual between an account owned by the individual in the United States and an account owned by the individual abroad that are offered by the same parent company
- 4. Additional “Safe Harbor” Discretion

Key Dates, Rulemaking, and Operative Timeline

Act takes effect on the earlier of:

- 18 months after enactment; or
- 120 days after final implementing regulations are issued

Treasury Rulemaking

- Sept 19, 2025 – Advanced notice of proposed rulemaking & solicitation of comments
- Comments closed Nov 4, 2025 – 378 comments

OCC and FDIC Rulemaking

- OCC's March 2, 2026 NPRM proposes implementing regulations; comment period closes May 1; final rule publication pending
- FDIC April 7, 2026 NPRM; comments due June 9 (with extension for application procedures comments)
- Each agency's rules generally track their mandate

03

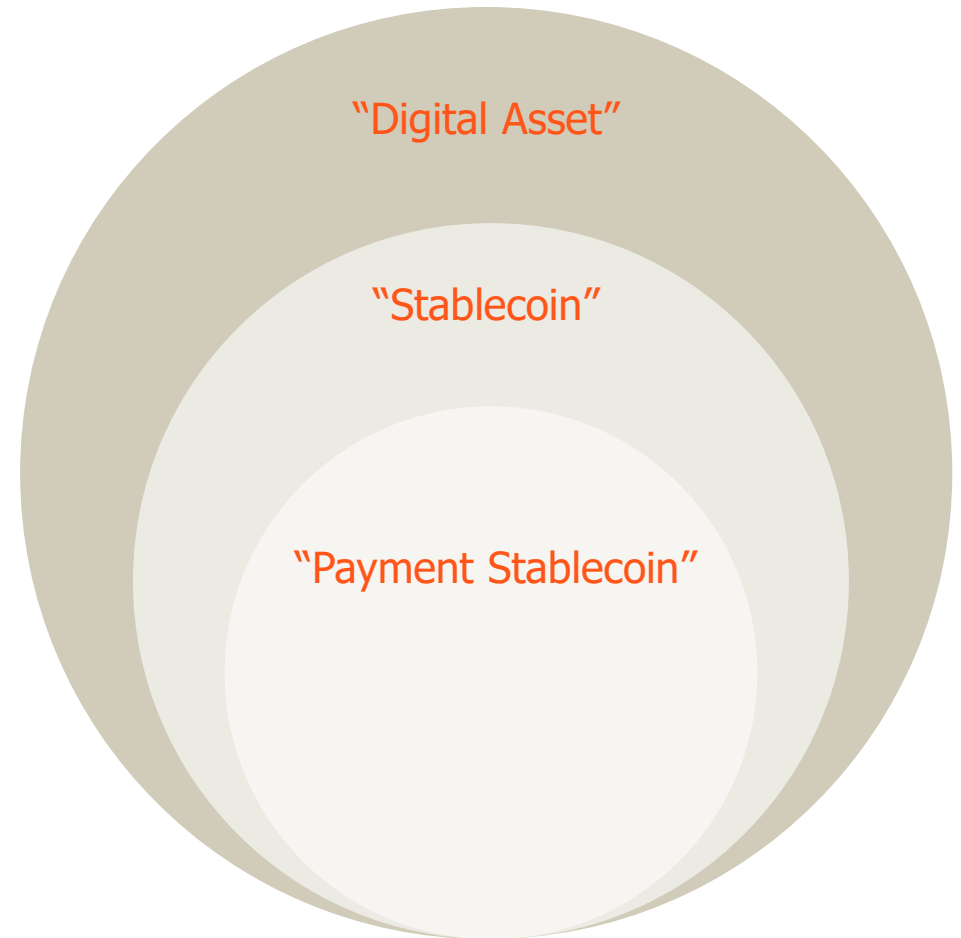
What is covered and what isn't

What is covered – “Payment Stablecoins”

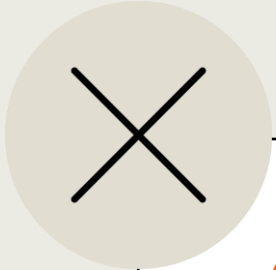
Only Payment Stablecoins are regulated by the Act;
being outside this definition means the Act’s issuance
regime does not apply

Key definitional features:

- digital representation of value
- recorded on a cryptographically secured distributed ledger (digital asset)
- is or designed to be used as a means of payment or settlement;
- Issuer is obligated to convert, redeem, or repurchase for a fixed amount of monetary value; and
- Issuer represents or creates the reasonable expectation that it will maintain a stable value relative to the value of a fixed amount of monetary value.



What is NOT covered



explicit exceptions

- a security, as defined in section 2 of the Securities Act of 1933 (15 U.S.C. 77b), section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), or section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2)
- a deposit (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), including a deposit recorded using distributed ledger technology;
- a “national currency”
- “Endogenously-collateralized Payment Stablecoins”

04

Gatekeeping Function

Core Element – Prohibition on issuances, offers and sales

- Only a “permitted payment stablecoin issuer” may issue a payment stablecoin in the United States
- No grandfather rights; no de minimis exception
- Penalties for Violation of these prohibitions
 - Regulatory referral to DOJ
 - Fines, imprisonment, or both



Core Element– Prohibition on issuances, offers and sales

- Deplatforming non-permitted stablecoins
 - Subject to a 3-year sunset period, prohibits any “digital asset service provider” (DASP) from offering or selling a payment stablecoin to a person in the United States, unless the payment stablecoin is issued by a permitted payment stablecoin issuer.
 - Prohibits any DASP from offering, selling, or otherwise make available in the United States a payment stablecoin issued by a “foreign payment stablecoin issuer” unless the foreign payment stablecoin issuer has the technological capability to comply, and will comply, with the terms of any lawful order and any reciprocal arrangement pursuant to section 18
- Again, no grandfather rights; no de minimis exception
- Same penalty framework applies



Other issues for non-permitted Payment Stablecoins

- Not eligible as cash or as a cash equivalent margin and collateral for futures commission merchants, derivative clearing organizations, broker-dealers, registered clearing agencies, and swap dealers
- not acceptable as a settlement asset to facilitate wholesale payments between banking organizations or by a payment infrastructure to facilitate exchange and settlement among banking organizations.
- Not treated as cash or as a cash equivalent for accounting purposes;



What is a “Digital Asset Service Provider”

- Person
- For compensation or profit
- Engages in the business in the United States (including on behalf of customers or users in the United States) of—
 1. exchanging digital assets for monetary value;
 2. exchanging digital assets for other digital assets;
 3. transferring digital assets to a third party;
 4. acting as a digital asset custodian; or
 5. participating in financial services relating to digital asset issuance;



Exceptions ...

“Digital Asset Service Provider” Exceptions

DASP does **not** include:

1. a distributed ledger protocol;
2. developing, operating, or engaging in the business of developing distributed ledger protocols or self-custodial software interfaces;
3. an immutable and self-custodial software interface;
4. developing, operating, or engaging in the business of validating transactions or operating a distributed ledger; or
5. participating in a liquidity pool or other similar mechanism for the provisioning of liquidity for peer-to-peer transactions.



05

Paths to Becoming an Issuer

Who can be an Issuer?

- 3 Pathways to Become a "Permitted Payment Stablecoin Issuer"
- Specific applications processes for each to be developed through rulemaking, state law changes

Pathway	Issuer Type	Primary Regulator
1 Bank subsidiary	Approved subsidiary of an insured depository institution	Appropriate Federal banking agency (OCC, Fed, or FDIC)
2 Federal qualified nonbank	Approved Federal qualified nonbank payment stablecoin issuer	Comptroller exclusively; regulated/supervised by OCC alone
3 State qualified issuer	State qualified payment stablecoin issuer under a qualifying State regime	State regulator (subject to federal oversight and \$10B threshold)

Limitations on Entities that may Issue

Insured Banks: Subsidiary Required; Direct Issuance Not Permitted

- Regulatory capital deconsolidation and deduction

Explicit Prohibition for Non-Financial Public Companies

- Public companies (i.e., required to file reports under section 13(a) or 15(d) of the Securities Exchange Act of 1934) that are not predominantly engaged in “financial activities” may not issue a payment stablecoin without unanimous vote of the Stablecoin Certification Review Committee
- Also applies to majority-owned or wholly-owned subsidiaries
- Similar extension of the prohibition to “any company” not domiciled in the United States or its Territories that is not predominantly engaged in 1 or more financial activities



Paths to Issuance

Several possible entity types

- Depository Institution subsidiary
- Nonbank entity
- Non-depository National Bank established for this purpose Federal branch of a foreign banking entity

In each case, specifically approved by the appropriate Federal Stablecoin Regulator to issue stablecoins

Specific applications process to be developed; mandate to approve or deny a “substantially complete application” within 120 days (or deemed approved)

State vs. Federal

Echoing current dual banking system

State regimes

- Opt-in basis for issuers with total consolidated issuances <\$10B*
- Requires state framework to be “substantially similar” to federal framework
- If state system does not qualify, their issuers would fall under federal framework

Transition mechanics for issuers that cross \$10B threshold

Possibility of Treasury waiver of transition



06

What can issuers expect – Regulatory Reporting & Exams

What can issuers expect – Federal Reporting & Exams

Regulatory Reporting – Statutory Provisions

- submit to the appropriate primary Federal payment stablecoin regulator
- Report includes:
 - the financial condition
 - systems of for monitoring and controlling financial and operating risks;
 - compliance with the Act; and
 - BSA/sanctions compliance



Specific cadence is not statutorily defined – rulemaking by regulatory authorities

What can issuers expect – Federal Reporting & Exams



OCC NPRM:

- Weekly confidential reports covering issuance, redemption, trading volume, reserves and other operational and market data
- Quarterly standardized financial condition reports (income, expenses, balance sheet, reserves, capital, outstanding issuance value, assets under custody) within 30 days of quarter-end; OCC intends to publish this information publicly; requires CFO declaration and director/senior management attestation
- Monthly public reserve composition disclosure on the issuer's website
- Annual board-level AML/sanctions compliance certification (due within 180 days of approval and annually thereafter)
- If outstanding issuance value exceeds \$50 billion and the issuer is not subject to Exchange Act reporting: annual GAAP financial statements audited by a registered public accounting firm, posted publicly, and submitted to OCC within 120 days of fiscal year-end

What can issuers expect – Federal Reporting & Exams



OCC NPRM:

- OCC must examine permitted payment stablecoin issuers at a cadence/format similar to similarly situated OCC-regulated entities
- full-scope exams at least once per 12-month period
- Certain issuers may qualify for 18–36 month extended exam cycles at OCC discretion if specified conditions are met (no formal enforcement action, no recent change in control, small issuance/trading volume, compliance with reserve/reporting requirements)

What can issuers expect – Federal Reporting & Exams



- Examinations areas:
 - the nature of the operations and financial condition;
 - the financial, operational, technological, and other risks associated within the permitted payment stablecoin issuer that may pose a threat to:
 - the safety and soundness of the permitted payment stablecoin issuer; or
 - the stability of the financial system of the United States; and
- There is a statutory requirement to avoid duplication, and for similarly-situated entities to be treated equally from a frequency and content perspective

Enforcement Authority

Vested in primary Federal payment stablecoin regulators

- Suspension or revocation of registration –
 - willfully or recklessly violating or has willfully or recklessly violated (A) the Act or an order or regulation under the Act, or (B) a written regulatory condition or agreement.
 - Issuer or institution-affiliated party
- Cease-and-desist proceedings
 - Remedial or preemptive
 - Negative or affirmative
- Removal and prohibition authority



07

Life as an Issuer – Requirements and Limitations

Specifically Prohibited Practices

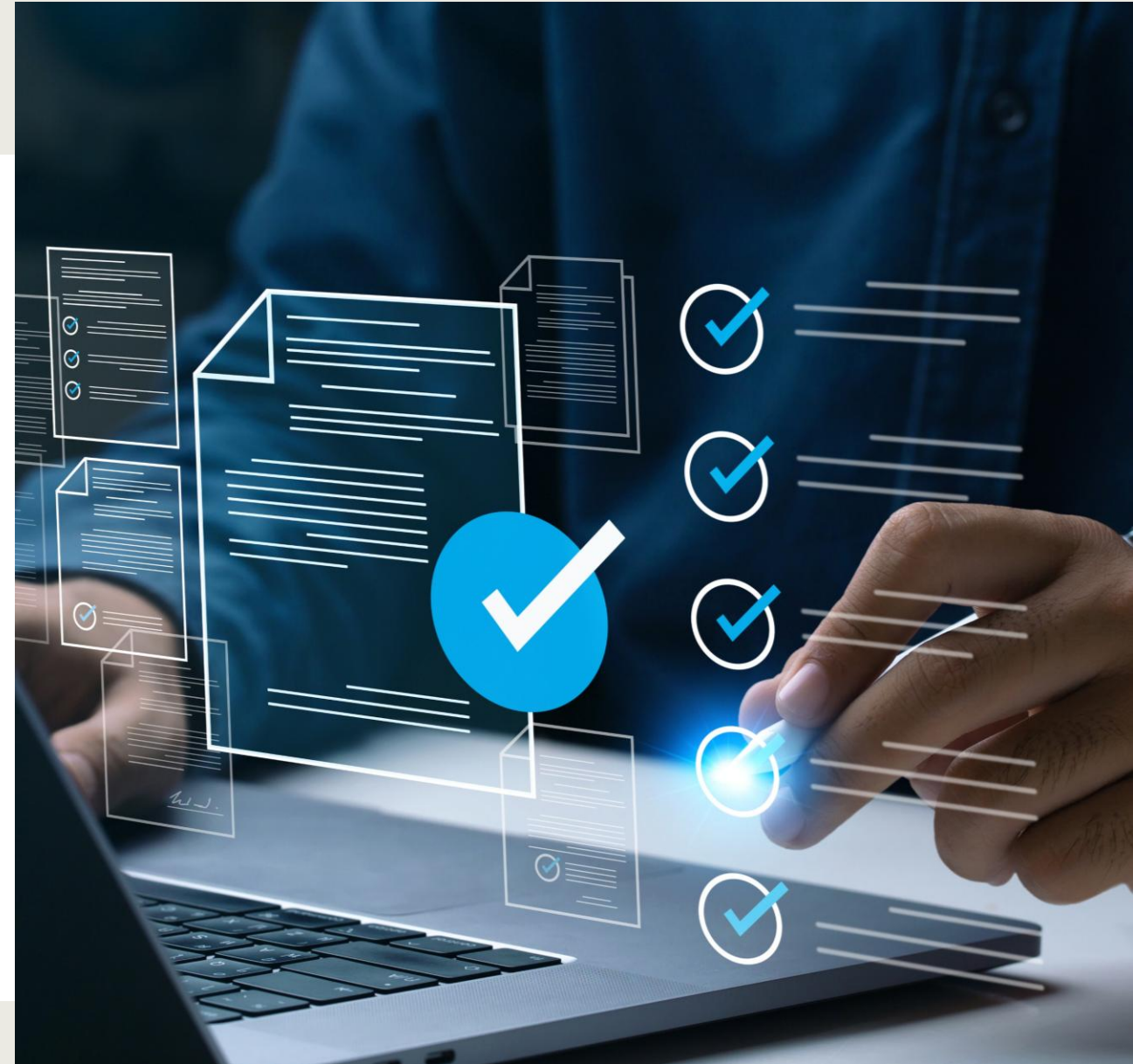
- No “interest or yield”
 - “whether in cash, tokens, or other consideration”
 - “solely in connection with the holding, use, or retention of such payment stablecoin.”
- Anti-tying
- Prohibition of certain persons
- No deceptive naming or marketing



Limitation on Issuer Activities

A permitted payment stablecoin issuer may **only**:

- issue payment stablecoins;
- redeem payment stablecoins;
- manage related reserves, including purchasing, selling, and holding reserve assets or providing custodial services for reserve assets, consistent with State and Federal law;
- provide custodial or safekeeping services for payment stablecoins, required reserves, or private keys of payment stablecoins, consistent with this Act; and
- undertake other activities that “directly support any of the activities described in clauses (i) through (iv)”.



Limitation on Issuer Activities

Limitation on other crypto activities

- Non-payment-stablecoin crypto-assets may be held as principal only as necessary for limited operational purposes — for example, testing a distributed ledger used for issuance/redemption
- If paying network or gas fees requires holding non-payment-stablecoin crypto-assets, the issuer may do so
- not permitted as reserve assets



Issuer Reserve Requirements

- “identifiable reserves” backing the outstanding payment stablecoins
- at least 1 to 1 basis
- Limited asset types:
 - US currency (including reserve notes or money standing to the credit of an account with a Federal Reserve Bank)
 - Funds held as demand deposits or insured shares at an insured depository institution
 - T Bills with issued or remaining maturity of 93 days or less.
 - Certain overnight repos and reverse repos
 - Mutual fund shares (invested solely in underlying assets described in clauses (i) through (v))
 - any other similarly liquid Federal Government-issued asset approved by the primary Federal payment stablecoin regulator
 - any reserve described in clause (i) through (iii) or clause (vi) through (vii) in tokenized form, provided that such reserves comply with all applicable laws and regulations;



Prohibition on Rehypothecation

Reserves may not be pledged, rehypothecated, or reused by the permitted payment stablecoin issuer, either directly or indirectly.

Exceptions

- satisfying margin obligations in connection with permissible repos or reverse repos
- satisfying obligations associated with the use, receipt, or provision of standard custodial services; or
- creating liquidity to meet reasonable expectations of requests to redeem payment stablecoins, such that reserves in the form of Treasury bills may be sold as purchased securities for repurchase agreements with a maturity of 93 days or less through a clearing agency (with prior regulatory approval)

Reserve Transparency - Public-facing Disclosure

- Published to public-facing website of issuer
- Monthly
- Composition of the issuer's reserves on the website of the issuer
- The total number of outstanding payment stablecoins issued by the issuer; and the amount and composition of the reserves (including the average tenor and geographic location of custody of each category of reserve instruments).



Fee/Redemption Transparency

- Issuers required to publicly disclose redemption policy
 - “clear and conspicuous procedures for timely redemption of outstanding payment stablecoins”
 - Discretionary limitations on timely redemptions may only be imposed by regulatory authorities
- Clear, conspicuous, plain language disclosure of all fees associated with purchasing or redeeming the payment stablecoins
- Fees may only be changed upon 7 days’ prior notice.



Capital Requirements

- Tailored Approach, Not Standardized Formula
- The Act requires capital requirements tailored to issuer business model and risk profile and not exceeding what is sufficient for ongoing operations
- OCC focuses primarily on operational risk (with other risks addressed via reserves, liquidity, and diversification requirements)
- The OCC proposes individualized capital determinations at licensing/chartering rather than a standardized formula
- Minimum capital floor during the de novo period: \$5 million
- “De novo period” = generally three years post-licensing/chartering (or transition); may be extended or shortened by the OCC based on business model changes, volatility, losses, weak earnings, poor risk management, or regulatory violations



“Operational Backstop”

- Part of OCC proposal
- Separate Pool for Business Continuity
 - a designated pool of highly liquid assets
 - separate from both reserves and capital
 - to fund ongoing operations during a business disruption, calculated based on actual total expenses over the prior 12 months (recalculated quarterly)
 - Eligible backstop assets: U.S. currency (directly or at a Federal Reserve Bank); fully insured demand deposits at a U.S. insured depository institution; or qualifying U.S. Treasuries; must be separately identified in reports and financial statements from reserve assets

Consequences



BSA/AML Compliance

- Permitted payment stablecoin issuers are financial institution for purposes of the Bank Secrecy Act
- Subject to BSA requirements
 - AML program (risk assessments, BSA officer, etc.)
 - retention of appropriate records;
 - suspicious transaction monitoring and reporting;
 - maintenance of an effective economic sanctions compliance program, including verification of sanctions lists, consistent with Federal law.
 - customer identification program (CIP), and enhanced due diligence (EDD)
 - technical capabilities, policies, and procedures to block, freeze, and reject specific or impermissible transactions that violate Federal or State laws, rules, or regulations;
- Treasury to adopt implementing rules
- Periodic certifications



Sanctions Compliance

- Technical ability to comply with orders to block transactions is a precondition to the issuance of payment stablecoins
- Treasury to coordinate with a permitted payment stablecoin issuer before taking any action to block and prohibit transactions in property and interests in property of a foreign person to ensure that the permitted payment stablecoin issuer is able to effectively block a payment stablecoin of the foreign person upon issuance of the payment stablecoin, but
- Treasury authorized to take action without prior notice
- Clarifying carveback for foreign issuances



“Nothing in this paragraph shall be construed to alter or affect the authority of State payment stablecoin regulators with respect to the offer of foreign-issued digital assets that are issued within a foreign jurisdiction.”

Risk Management and IT Security

- Principles-based operational, compliance, and IT risk management standards
- Third-party risk management obligations: due diligence, contractual requirements, and ongoing monitoring using audits, testing summaries, or equivalent evaluations
- IT/security program requirements:
 - board approval/oversight; asset inventories and controls;
 - validation/testing (including smart contracts);
 - incident response;
 - safeguards for nonpublic personal information;
 - and secure digital asset handling including private key management, backup, and recovery
- Unauthorized access to sensitive customer information (including private keys): must investigate and notify affected customers and the OCC as soon as possible if misuse occurred or is reasonably possible (subject to law enforcement delay requests)



Real Consequences

- CMP Framework
 - For permitted issuers and institution-affiliated parties: material violations can trigger up to \$100,000 per day; knowing participation can add up to an additional \$100,000 per day
- False CEO/CFO reserve certifications: criminal penalties under 18 U.S.C. § 1350(c)
- Revocation of issuer approval: available if annual AML/sanctions certification is not submitted (with notice, hearing, and potential expedited action to protect public interest)
- Unlicensed issuance
 - Unlicensed issuance of a USD-denominated payment stablecoin: civil penalties up to \$100,000 per day (including for knowing participation by institution-affiliated parties)



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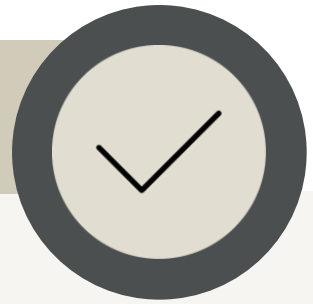
Some Takeaways

Takeaways for Prospective Issuers



- Stablecoin issuance becomes an exclusively licensed activity
 - No grandfathering – existing issuers must evaluate their tokens relative to the Act and act accordingly; consider impact of DASP deplatforming of non-compliant tokens
 - product, distribution, and partnership structures must align with one of three "permitted issuer" pathways — start the pathway analysis now
 - The yield prohibition requires careful review of all token distribution, white-label, and affiliate arrangements to avoid inadvertent violations
- Being an issuer will be expensive – reserve and operational capital requirements, compliance and reporting infrastructure, etc.
 - Plan for up to three separate capital pools: reserves (1:1 eligible assets); regulatory capital (operationally tailored); and operational backstop (liquidity for disruption scenarios)
 - The compliance program must operationalize: 1:1 reserves in eligible assets only; monthly reserve disclosure and independent examination; and executive certifications (with criminal liability exposure for knowing falsity)

Takeaways for Prospective Issuers



- Regulation, examination and reporting will rhyme with existing bank regulatory frameworks
- Monitor OCC and FDIC comments and final rules; Act effective date is approaching
- Assess issuer pathway suitability and initiate pre-application dialogue with regulators
- Review white-label and distribution agreements for yield prohibition compliance
- Audit reserve management and custody arrangements against proposed eligible asset and eligible financial institution standards
- Map third-party and sub-custodian arrangements against proposed risk management and custody requirements

Takeaways for DASPs and Others



- Are you a Digital Asset Service Provider?
 - firms that exchange, transfer, or custody digital assets for compensation or profit are covered
 - protocol operators, immutable self-custodial interfaces, node validators, and peer-to-peer liquidity pool participants are expressly excluded
- If you are a DASP, do you currently service non-compliant tokens?
 - evaluate paths to deplatforming
 - monitor transitions to compliant issuances; evaluate T&Cs for relevant issues
- Self-custody hardware/software providers are excluded from custody requirements unless they control (or hold themselves out as controlling) assets or keys, or provide (or hold themselves out as providing) custody/safekeeping services — the line is control, not technology
- Banks, trust companies, and credit unions retain their existing authority to engage in permissible digital asset activities under applicable law — the Act does not independently expand or restrict such authority

09

UCC Article 12

UCC Article 12: The New Rules for Controllable Electronic Records

- Part of the 2022 UCC Amendments
- Governs digital assets capable of “control”
- Harmonizes blockchain commerce with UCC structure
- Integrates with revised Article 9
- Became effective in early adopting states beginning in 2023
 - California 2024
 - Illinois 2024
 - Florida 2025
 - New York 2026

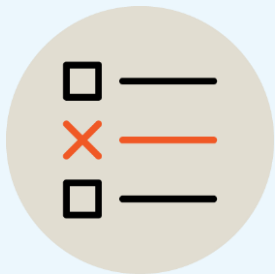


Article 12 Adoption Status

Enacted		Pending Legislation	No Action
Alabama Arkansas California Colorado Connecticut Delaware District of Columbia Florida Georgia Hawaii Illinois Indiana Iowa Kentucky Louisiana Maine	Minnesota Montana Nebraska New Hampshire New Mexico New York North Carolina North Dakota Oklahoma Oregon Pennsylvania Rhode Island South Dakota Utah Vermont Virginia Washington	Alaska Maryland Massachusetts Mississippi Ohio South Carolina Tennessee	Arizona Idaho Kansas Michigan Missouri New Jersey Texas West Virginia Wisconsin Wyoming

Why Article 12 was created

Traditional UCC rules didn't address blockchain based assets



Courts struggled to classify crypto under Articles 7, 8, or 9



Need for clarity on ownership, transfer, and security interests



Article 12 provides a technology neutral framework - focuses on "control," not specific technology



Technology Neutral - Same legal outcome across different technical designs (example)

Example:

- Party A lends money secured by a digital asset owned by Party B.
- Party A obtains “control” of the asset as defined in UCC 12-105.

- Article 12 does not care whether control is achieved through:
 - holding a private key
 - a multi-sig arrangement
 - a custodial platform
 - a smart contract escrow
 - a future custody mechanism yet to be invented.
- As long as the functional criteria for control are met, Party A has a perfected security interest by control and receives the priority benefits Article 12 provides.



Scope of Article 12

Article 12 applies to “Controllable Electronic Records” (CERs):

- Electronic records susceptible to control (§12-102(a))

Includes:

cryptocurrencies, NFTs, tokenized receivables

Excludes:

deposit accounts, electronic chattel paper, securities
(§12-103)

Definition of a Controllable Electronic Record - (§12-105)

- A **controllable electronic record** is an electronic record over which a person has “control”
- Control exists when a person has the exclusive power to:
 - **Enjoy substantially all benefits** of the record
 - **Prevent others** from enjoying those benefits
 - **Transfer control** of the record to another person
 - The person in control must be **readily identifiable** as having that control
- Functional standard — focuses on outcomes, not technology



Security interests in CERs

Article 9 was revised when Article 12 was adopted to address digital assets

“**General Intangibles**” includes a controllable electronic record. §9-102(a)(42).

A security interest in a Controllable Electronic Record may be perfected by control (§§ 9-314(a) and 9-107A)

Perfection by filing is permitted, but perfection by **control** gives the **highest priority** (§9-326A)

“Control” – common structures:

Rather than delivering possession, the borrower grants the lender **control** within the meaning of UCC § 12-105. This typically means the lender has the exclusive power—directly or through a trusted intermediary—to move, freeze, or reassign the cryptocurrency.

Common structures:

- **Custodial wallet:** Assets held by a qualified custodian who agrees to follow the lender’s instructions upon default.
- **Multi sig wallet:** Lender holds a required signing key, giving it veto or unilateral transfer power.
- **Smart contract escrow:** Code enforces lender transfer rights if specified conditions (e.g., default) occur.

“Exclusive Powers”

Section §12-105(a)(1)(B) requires that a person have **exclusive power** to:

- prevent others from obtaining substantially all benefits of the CER, and
- transfer control of the CER.

Subsections (b)–(d) of §12-105 deliberately relax what “exclusive” means in a digital environment.

- exclusivity ≠ sole physical or technical access
- exclusivity can exist despite protocols, automation, or service providers, and
- exclusivity fails only when another person has independent, unilateral power.



Hypothetical 1: CER collateral — control exists

Facts:

Borrower owns 50 Bitcoin. Lender makes a secured loan. The Bitcoin is moved into a smart contract based custodial wallet. The wallet is programmed so that:

- All staking rewards, forks, airdrops, and other economic returns flow automatically to the lender's designated address while the loan is outstanding
- The lender can direct liquidation or rehypothecation of the Bitcoin upon borrower default
- The borrower retains legal title but cannot access economic returns



Analysis:

Control test under § 12-105(a)(1) is satisfied. The lender has the power to enjoy substantially all of the benefits of the digital electronic record because:

- The lender receives all economic returns generated by the Bitcoin
- The lender can monetize or apply the value of the Bitcoin to the loan
- The benefits are not merely contingent or contractual promises—they are technically enforced by the system governing the record



Hypothetical 2: Cryptocurrency Exchange Account — No Control

Facts:

- Lender makes a \$2M term loan to Borrower
- Borrower grants security interest in 60 Bitcoin held in its Coinbase account as collateral
- Loan agreement states Borrower will not sell or transfer the Bitcoin during the loan term
- Lender does not execute a control agreement with Coinbase and Borrower
- Lender cannot instruct Coinbase to freeze, transfer, or liquidate the Bitcoin
- Coinbase takes instructions exclusively from Borrower
- Lender perfects by filing a UCC-1 financing statement

Result:

No control under UCC § 12-105.

- Lender cannot prevent withdrawal, cannot direct transfer on default, and cannot instruct the custodian.

Key Takeaway

- A lender relying solely on a borrower's covenants and a UCC-1 filing — without a control agreement — risks losing its CER collateral entirely.



Hypothetical 3: Multi-Sig Wallet — Control Established

Facts:

Bank makes a \$2M term loan to Borrower.

Borrower grants security interest in 60 Bitcoin held in a 2-of-3 multi-signature wallet - Any transaction requires 2 of 3 key signatures to execute

Borrower, Bank and Anchorage Digital (Bank's custodian) each hold one key

Under the tri-party custody and control agreement, Anchorage Digital agrees to:

- Act solely on Bank's instructions with respect to the wallet
- Upon an event of default, transfer or liquidate the Bitcoin at Bank's direction without requiring Borrower's consent
- Disregard any instruction from Borrower that conflicts with Bank's directions

Borrower cannot move the Bitcoin without Bank's cooperation

Result:

Control established. Together, Bank and Anchorage hold 2 of 3 keys and can authorize or block any transfer without Borrower's participation.

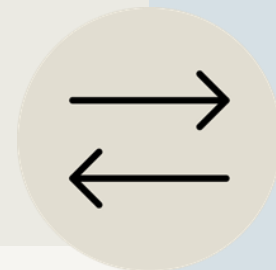
Critically, upon default, Anchorage is contractually obligated to act on Bank's direction alone, giving Bank the exclusive practical power to dispose of the collateral.

Bank satisfies the § 12-105 control test.



Transfer of CERs - UCC § 12-104

- Governs transfer of rights in a Controllable Electronic Record
- A transferee acquires only the rights the transferor has or has power to transfer
- Transfer is effective even if the transferor does not fully own the CER
- Rights of transferee are subject to: property claims, unless displaced by qualifying-purchaser rules
- Works together with:
 - Control (§ 12-105)
 - Qualifying purchaser protections (§ 12-102(a))
- **Takeaway:** Section 12-104 establishes the baseline transfer rule; qualifying purchaser status determines when competing claims are cut off.



“Qualifying Purchaser” – UCC 12-102(a)



- A **qualifying purchaser** is a person who:
 - Obtains control of a controllable electronic record
 - **Gives value**
 - Acts in **good faith**
 - Takes **without notice** of an adverse property claim

A qualifying purchaser:

- Takes the CER **free of competing property claims**
- Receives protections similar to a **holder in due course**

Significance:

- Facilitates negotiability of digital assets
- Promotes certainty and finality in blockchain transactions
- Enables CERs to function effectively as commercial assets

Hypothetical Example - Stolen Bitcoin:

- Hacker gains unauthorized control of Bitcoin by hacking a wallet or account. Hacker transfers Bitcoin to Buyer in an on-chain transaction.
- Buyer:
 - pays value
 - obtains control of the Bitcoin
 - acts in good faith
 - has no notice of the hack or adverse claim

Under UCC Article 12, Buyer may qualify as a qualifying purchaser

Result: Buyer can take the Bitcoin free of prior ownership claims, despite the hack



NY UCC §12-104(h): UCC Filing Does **Not** Constitute Notice



Filing a financing statement is not notice for purposes of Article 12



Knowledge or notice of a claim cannot be imputed solely from a UCC filing



Filing may perfect a security interest under Article 9, but does not affect take-free protections under Article 12

Why Qualifying Purchaser Rules Matter to Secured Lenders

A **qualifying purchaser with control** can take a CER free of competing property claims

Filing alone is insufficient — a lender without control can be cut off

Creates incentive for lenders to **obtain and maintain control**, not just file financing statements



Takeaway: Control protects lenders against qualifying-purchaser risk

Transfer vs. Take-Free Under Article 12

Transfer (§ 12-104)

Transferor → Transferee

Result:

- Transferee gets **only the rights the transferor had** or could transfer
- Subject to **existing** property claims



Take-Free (§ 12-102(a))

Transferor → Qualifying Purchaser

- Purchaser gives value
- Obtains control
- Acts in good faith
- No notice of adverse claim

Result:

Takes CER **free of prior** property claims



Questions?



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