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McHenry And House Members Move To Fix Crypto Policy

Norbert Michel

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Last week, the House of Representatives took a positive step toward delivering what U.S. cryptocurrency policy severely needs: regulatory clarity. House Financial Services Committee Chairman Patrick McHenry (R-NC) and his fellow committee members, along with Agriculture Committee Chairman Glenn Thompson (R-PA), deserve a ton of credit for providing leadership on this issue.

While the Financial Services Committee voted to send many different bills to the full House, three contain policies that would provide clarity *and* dramatically improve the regulatory framework for crypto. And at least two major policy changes appear to have bipartisan support in the House.

The United States has long had one of the world's leading financial markets, but it is falling behind on crypto policy. Many of the types of policy changes in these bills would help foster much needed innovation and competition, helping secure U.S. financial markets' integral place in global finance.

As my Cato colleagues Jack Solowey and Jennifer Schulp have argued, a sensible approach to the crypto market would be to determine whether tokens are securities or commodities based on whether their operating networks are decentralized. This approach seems to have bipartisan

support – the Financial Innovation and Technology for the 21st Century Act adopts the approach, and it passed the Financial Services committee with six Democrats joining the Republicans. It then passed in the Agriculture Committee by voice vote.

Another good step toward regulatory improvement in this bill would be to provide (long-sought) pathways for lawfully registering certain crypto exchanges. It clarifies which crypto assets can be listed on various trading systems or exchanges, the Securities and Exchange Commission's authority to oversee digital securities, and the Commodities Futures Trading Commission's authority to oversee digital commodities.

While no legislation is perfect, the current state of relying on regulation by enforcement and judicial decisions to figure out jurisdictional issues has been an innovation-killing disaster. (For more on sound crypto policy that promotes innovation and competition, see this Cato at Liberty post, as well as these Cato briefing papers.)

Separately, the Financial Services Committee passed the Clarity for Payment Stablecoins Act with five Democratic members joining despite opposition from Ranking Member Maxine Waters (D-CA) and, apparently, the White House.

As Solowey and Schulp have chronicled, this stablecoin bill was the result of months of negotiations between Democrats and Republicans. While such negotiations rarely produce perfect policies, the committee's latest attempt did "open the door to more kinds of stablecoin issuers, permit technological experimentation, and help to clarify longstanding jurisdictional issues." It was especially encouraging that the committee ditched the Biden administration's preferred approach of restricting stablecoin issuers to only federally insured depository institutions.

Still, one of the major shortcomings of the committee's approach remains because the bill leaves too much regulatory discretion in place. Specifically, it grants regulators the authority to use overly vague criteria to prohibit stablecoin issuers from entering the market, thus working

against the goal of fostering more issuers that competitively provide their services. (For more on sound approaches to stablecoin policies that promote innovation and competition, see this Cato at Liberty post, this Cato policy guide, and this Cato briefing paper.)

Perhaps the most controversial of the new bills – the Keep Your Coins Act – passed without bipartisan support. Given the Democrats' historic record as staunch defenders of privacy rights and protection from government intrusion, this lack of support may seem strange. However, what may be an even bigger stunner was that one Democrat proposed forcing Americans to get a license to have a private crypto wallet *and* blacklisting any cryptocurrency that touches an unlicensed wallet.

Regardless, the Keep Your Coins Act would protect users' right to "self-custody" their tokens by ensuring "that consumers are allowed to maintain custody of their digital assets in self-hosted wallets." It would prohibit the head of a federal agency from being able to "restrict, or otherwise impair the ability" of someone from using cryptocurrency for their "own purposes, such as to purchase real or virtual goods and services for the user's own use."

Given the federal regulatory and anti-money laundering framework built around the Bank Secrecy Act, a policy such as this one is necessary to protect consumers against the risks associated with using a third party to hold their cryptocurrency. (For more on some of these risks, see these Cato at Liberty posts by my colleague Nick Anthony.)

For years, the United States has sorely needed a sound regulatory framework for cryptocurrency, but Congress has failed to deliver. The events of the past week show that many members of the House of Representatives are serious about fixing this problem.

I am Vice President and Director of the Cato Institute's Center for Monetary and Financial Alternatives.