

Crypto Crackdown Survives in Infrastructure Bill

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Cryptocurrency will be defined as a specified security and its exchanges subject to new special reporting requirements and hefty consequences for noncompliance — including felony charges — under legislation set to be signed into law.

The Infrastructure Investment and Jobs Act ([H.R. 3684](#)), passed by the House [late November 5](#), would put \$550 billion in new funding into transportation, broadband, and utilities. The legislation, expected to be signed by President Biden in coming days, contains a few tax provisions, including the cryptocurrency information reporting requirements.

Congress amended the definition of broker under [section 6045\(c\)\(1\)\(C\)](#) to read “Any person who (for consideration) regularly acts as a middleman with respect to property.” A subparagraph (D) has also been added to the definition of broker, which reads “Any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.” Some observers worry that under that definition, anyone engaging in cryptocurrency exchanges will be considered a broker, including popular trading apps such as Robinhood.

The legislation provides that digital assets will be added to the list of specified securities. Cryptocurrency would fall under this provision because the legislation defines digital asset as “any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.”

Since cryptocurrency will be considered a security, it will be subject to the same reporting requirements as other specified securities such as stocks and bonds, which require a Form 1099-B filing to report their sale and basis.

Failure to report comes with a price, potentially a hefty one. Those who fail to report cryptocurrency exchanges could face a \$250 penalty per customer, with a maximum penalty of \$3 million.

The legislation also provides that digital assets valued at \$10,000 or more can be considered cash under [section 6050I](#). Therefore, any person engaging in a trade or business that receives more than \$10,000 in cryptocurrency must file a Form 8300. Failure to do so can result in not only civil consequences but also felony charges.

The cryptocurrency reporting provision is the largest revenue raiser in the bill, with the [Joint](#)

[Committee on Taxation](#) estimating that it would raise \$28 billion over 10 years.

Penalty ‘Disaster’

The provisions on cryptocurrency were a last-minute addition to the Senate’s version of the bill this summer, which [unnerved the cryptocurrency committee](#).

Members of the industry fear the legislation is too broad in its definitions, arguing that the definition of broker would end up capturing cryptocurrency miners and software developers who don’t facilitate such transactions. They argue that reporting requirements will stunt innovation and force those entities overseas.

But some industry proponents are more worried about the threat of criminal consequences under [section 6050I](#). Brian Armstrong, co-founder and CEO of Coinbase, [tweeted](#): “This 6050I provision in the infrastructure bill seems like a disaster if I understand it. Criminal felony statute that could freeze a lot of healthy crypto behavior.”

Twelve regional blockchain associations sent a [joint letter](#) to Congress on July 30 requesting that it drop the provision, but the bill [passed the Senate](#) August 10 before the House followed suit.

Once signed into law, the provisions concerning cryptocurrency reporting will go into effect after December 31, 2023.