

What To Expect From the New SEC Chairman Gary Gensler on Cryptocurrency

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Background

In April 2021, the Senate confirmed Gary Gensler, President Biden's nominee, as the new chair of the Securities and Exchange Commission ("SEC"). The former banker was a staunch regulator as the Commodity Futures Trading Commission ("CFTC") chair under President Obama, and many expect his propensity for hardline rules to continue as the SEC chair.[\[1\]](#)

Many believe that Gensler will bring much-needed, positive change to the digital asset industry in the U.S. Unlike others in government roles, Gensler has devoted himself to understanding the technologies and economics surrounding cryptocurrencies. Before his appointment, Gensler taught classes on blockchain and cryptocurrencies as a professor at the MIT Sloan School of Management. His extensive background in economics, politics, and technology made him an optimal choice to head the SEC, and the Senate confirmed him just a month after his nomination.[\[2\]](#)

Gensler's Stance on the Cryptocurrency World

In May of 2021, Gensler appeared at a hearing before the House Financial Services Committee, where he voiced his opinion on several SEC regulatory priorities.[\[3\]](#) In response to several questions on point, Gensler noted that we must rely on Congress for any substantial development in cryptocurrency regulation. Gensler explained that because the SEC only classifies several cryptocurrencies as securities (and are thus under the direct purview of the SEC), there is little that the SEC can do to effect real change.[\[4\]](#) The ongoing case between the SEC and Ripple Labs over whether the XRP token is a currency or a security further illustrates the need for Congressional intervention.[\[5\]](#)

Gensler also noted at the hearing that there is very little fraud protection in the cryptocurrency space and not much that can be done about those who use cryptocurrencies to evade taxes and support terrorism. Gensler wants the SEC to be technology-neutral so they do not inadvertently cripple innovation. He believes in technological growth under the watchful eye of the government. In the past, Gensler has suggested that America should subsume cryptocurrencies into the financial regulatory system; however, he has still not proposed a plan for doing so. Gensler remains committed to addressing the growing issues within the cryptocurrency world but maintains a firm conviction that actual change will need to come from Congress.[\[6\]](#)

A Patchwork Approach to Regulation

Although Gary Gensler's knowledge and familiarity with the crypto world brings a refreshing change of direction to the SEC, he alone cannot create a safe environment for crypto consumers. As SEC chair, whose mandate is to protect U.S. investors (rather than to regulate for a larger national [or global] audience), Gensler faces many limitations in taming the crypto market. Even as Senator Elizabeth Warren (D-MA) called on Gensler to outline ways in which cryptocurrency markets undermine the SEC's mission to ensure that markets are fair and efficient, a lack of regulation is not something that Gensler can remedy quickly.^[7] Therefore, others have focused on different forms of regulation to address the growing problem.

For one, Representative Warren Davidson (R-OH) has presented a bipartisan bill called the Token Taxonomy Act to the House.^[8] The bill seeks to establish clarity in the crypto space and ensure that the development of blockchain technology remains in the U.S. Many hope that the legislation will provide a framework and straightforward path to a more orderly and secure future for the blockchain and crypto spaces.

Second, in March 2021, Representatives Patrick McHenry (R-NC) and Stephen Lynch (D-MA) introduced H.R. 1602, the Eliminate Barriers to Innovation Act of 2021 (which has since passed in the House of Representatives).^[9] The bill would mandate establishing a working group composed of industry experts and representatives from both the SEC and CFTC to evaluate the current U.S. legal and regulatory framework for digital assets.

Conclusion

SEC Chairman Gensler is widely expected to be a friend to the cryptocurrency world. Not only is he an expert in the field, but he understands the underlying technology and the nuances that permeate the abstruse industry. However, Gensler is currently limited in how he can address the issues surrounding cryptocurrency. While the future of cryptocurrency regulation is still unknown, Republicans and Democrats alike have prioritized addressing it in the near future. And many believe that if Congress expands the SEC's power, ensuing regulation will provide the cryptocurrency space with enhanced consumer protection, integral stability, and much-needed legitimacy. Senator Cynthia Lummis (R-WY) purports that "smart legislation is on the way," but only time will tell if our legislative body can enact effective laws to address the fast-moving crypto world.^[10]

This Kelley Drye client advisory was written with the assistance of summer associate Steven W Schlesinger.

[1] <https://www.sec.gov/biography/gary-gensler>.

[2] See <https://www.forbes.com/sites/jonathanponciano/2021/04/14/gary-gensler-confirmed-sec-chairman/?sh=a93881b5862f>; see also <https://www.sidley.com/en/newslanding/newsannouncements/2021/02/what-to-expect-from-a-gensler-sec>.

[3] <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=407748>.

[4] <https://www.sec.gov/news/testimony/gensler-2021-05-26>.

[5] <https://www.sec.gov/news/press-release/2020-338> and <https://www.jdsupra.com/legalnews/ripple-effect-sec-lawsuit-against-7946641/> (discussing the potential for the SEC's lawsuit against Ripple

Labs to provide future guidance for the crypto industry); *see also*

<https://www.investmentexecutive.com/news/from-the-regulators/sec-decodes-ico-rules-tokens-are-securities/> (recounting the SEC's finding that Enigma MPC's crypto token was actually a security.)

The SEC settled the charges against Enigma, and the company agreed to return funds to investors and to register its tokens as securities. *Id.*

[6] <https://www.coindesk.com/sec-chair-gary-gensler-recommends-congress-regulate-crypto-exchanges>.

[7] <https://finance.yahoo.com/news/senator-warren-asks-sec-respond-071514717.html>.

[8] <https://davidson.house.gov/2021/3/davidson-reintroduces-token-taxonomy-act#:~:text=Congressman%20Ted%20Budd%20agreed.,and%20innovate%20for%20the%20future>.

[9] <https://www.congress.gov/bill/117th-congress/house-bill/1602>.

[10] <https://www.nytimes.com/2021/07/16/business/dealbook/crypto-powell-regulators.html>.