

GOP midterm victory would add pressure on fintech regulators

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If Republicans win control of Congress in the November midterms, people who closely follow financial technology expect pressure on regulators to push crypto-friendly rules across the finish line.

Lawmakers from both parties have teamed up on legislation that would regulate the industry following a chaotic year with a stablecoin failure and the bankruptcies of crypto lending companies. Bitcoin, one of the most popular cryptocurrencies, lost over 60 percent of its value since November 2021.

Republicans, though, have been particularly zealous in wanting more clearly defined rules of the road from regulators. Sen. Patrick J. Toomey, R-Pennsylvania, for example, has chastised regulators for not providing more clarity.

And Republicans are also against the government fulfilling a role they see as the domain of the private sector, one example being a [central bank](#) digital currency issued by the Federal Reserve.

Lee Reiners, policy director at the Duke Financial Economics Center in North Carolina, said Republicans have coalesced around a view that the Fed doesn't need to create its own digital currency because it would compete with stablecoins already on the market.

"Would it shock me if they introduced a bill that would ban the Federal Reserve from issuing a central bank digital currency or digital dollar?" Reiners said in an interview. "I wouldn't be shocked."

Republicans are favored to win the House, but the fight for the Senate is less certain. Inside Elections with Nathan L. Gonzales reports the GOP's margins have been slimming as the election approaches.

Even in a divided Congress, however, some think action on crypto is likely.

"I think regardless of what happens with the elections in November, that Congress is going to continue to have an appetite to act on legislation

related to cryptocurrencies and stablecoins," said Kristin Smith, executive director at the Blockchain Association, in an interview. Stablecoins are digital tokens whose value is tied to an asset such as the dollar.

Bipartisan bills have been circulating. One bill, introduced in August by Senate Agriculture Chair Debbie Stabenow, D-Michigan, and co-sponsored by ranking member John Boozman, R-Arkansas, would give the Commodity Futures Trading Commission the authority to regulate some of the largest digital commodities, including bitcoin.

A similar one, introduced in July by sponsor Sen. Cynthia Lummis, R-Wyoming, and co-sponsored by Sen. Kirsten Gillibrand, D-New York, would set the CFTC as top crypto regulator, but includes a wide range of other crypto provisions and also has tax implications.

Still more legislation is expected from Maxine Waters, D-California, chair of the House Financial Services Committee, and Patrick T. McHenry of North Carolina, the ranking member and likely chair of the panel if Republicans take the House.

"He is very passionate about these issues," Smith said of McHenry. "So I think he may be more of a driving force than if the Democrats (keep) control." McHenry would work to get something done quickly, Smith added.

A central bank [digital currency](#), a digital form of money that would be issued and backed by the Fed, however, is an issue that could be more partisan, Smith said.

Rep. Tom Emmer, R-Minnesota, chair of the Blockchain Caucus, introduced a bill in January that would ban the central bank from issuing a CBDC directly to individuals.

Banks or fintech?

Agencies are also moving forward on potential new rules.

The Consumer Financial Protection Bureau is considering rules for customer data sharing, Reiners noted. A proposal that would give bank customers control over their data would affect the relationship between traditional financial accounts and third-party apps such as Venmo.

Banks mostly are not keen on being required to share their customers' data, in part because it is extremely valuable, Reiners said. That could mean a choice for Republicans on whom they support most—banks or the fintech industry, he said.

"Historically Republicans have been broadly supportive of the banking industry, so this would kind of pit two of their constituencies against one another," he said.

Republicans could also smooth the path for what some call "rent-a-charter" arrangements, in which fintech companies partner with banks to make loans. If a nonbank fintech lending platform is underwriting loans, it is subject to state-by-state lender licensing requirements and also state-by-state interest rate and fee restrictions, according to a post by Reiners and Joseph Caputo for the Duke Financial Economics Center.

Many fintech lenders are already partnering with banks to avoid state restrictions by structuring their arrangements with banks so that the fintech credit platform markets to potential borrowers and the bank underwrites the loan, they said.

Democrats view it as a new form of payday lending, while Republicans view it as competition that benefits consumers by giving them more choice, Reiners said.

Late in former President Donald Trump's administration, the Office of the Comptroller of the Currency issued the "true lender" rule determining that a bank, and not the fintech company, is making the loan, therefore allowing such arrangements. Many on the left worried the rule would allow predatory interest rates for low-income consumers, Reiners said.

Congress used the Congressional Review Act to overturn the rule in June 2021.

At the time, President Joe Biden said "loan sharks and online lenders" had figured out how to get around interest rate caps. "These are so called 'rent-a-bank' schemes," Biden said. "And they allow lenders to prey on veterans, seniors, and other unsuspecting borrowers ... trapping them into a cycle of debt."

Republicans want to see that true-lender rule come back.

"That would be a pressure applied directly to the OCC and the FDIC [Federal Deposit Insurance Corporation]," Reiners said.

A Republican Congress also would mean increased oversight on regulators led by Biden appointees, said Aaron Klein, senior fellow at the Brookings Institution.

"Regulators have significant, independent authority, and determined regulators can usually move forward even in the face of congressional opposition," Klein said.

Klein said he expected the election impact on fintech regulation to be minimal.

"Perhaps the biggest change would be if Republicans took the Senate

and slowed the nomination process for new appointees," Klein said.

Nicole Valentine, fintech director of the Center for Financial Markets at the Milken Institute, said she anticipates some momentum in legislation and hearings in the next term.

"The United States is a market leader, and it would be great to see their continuation of leadership in this era of fintech and crypto," Valentine said.

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