

[Securities Regulation Daily Wrap Up, VIRTUAL CURRENCIES—President signs infrastructure bill with IRS crypto reporting provision, \(Nov. 15, 2021\)](#)

Securities Regulation Daily Wrap Up

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The bipartisan infrastructure bill contains mostly traditional transportation funding but also contains a cryptocurrency transaction reporting provision that may presage further Congressional regulation of blockchain activities.

President Joe Biden signed into law the Infrastructure Investment and Jobs Act ([H.R. 3684](#)) thus ending a months-long odyssey resulting in a compromise bill that passed the [Senate](#) first in August by a vote of 69-30 and then the [House](#) in November by a vote of 228-206, but only after a lengthy holding pattern in the House that ended with an agreement among House Democrats on whether moderate Democrats would vote for the forthcoming Build Back Better Act (BBBA) ([H.R. 5376](#)). That agreement may still hinge on how the Congressional Budget Office scores the BBBA.

Crypto and implementation. For securities law practitioners, the Infrastructure Investment and Jobs Act's cryptocurrency transaction reporting provision is one of its signature features, although this may not be the last time Congress addresses cryptocurrency issues in the coming months.

Much of the bill, however, concerns more traditional transportation and other infrastructure spending. Given the amounts of funds to be provided by the bill, the president also announced an [executive order \(Fact Sheet\)](#) creating the Infrastructure Implementation Task Force within the Executive Office of the President to help coordinate implementation of the Act by executive branch agencies. The president further [announced](#) that the former mayor of New Orleans, Mitch Landrieu, will be senior advisor responsible for coordinating implementation of the Infrastructure Investment and Jobs Act.

Renewed bipartisanship. For now, the Infrastructure Investment and Jobs Act is being held up as an example of how a hyper-polarized official Washington, D.C. can come together to pass substantive legislation. President Biden hailed the bill as a triumph of compromise and consensus that was built from the middle out and the bottom up rather than from the top down. The president suggested that fifty years from now, historians will look back and say that the signing into law of the Infrastructure Investment and Jobs Act was the day America began to win the 21st century competition.

The lead Senate negotiators, Rob Portman (R-Ohio) and Kyrsten Sinema (D-Ariz) echoed the president's words. Senator Sinema spoke first and said that this (referring to the signing ceremony and the assembled officials) is what it looks like when Democrats and Republicans get together to pass legislation. Senator Portman emphasized how the bill focused on core infrastructure without raising taxes, thus making the bill what he said some economists had dubbed counter-inflationary. Senator Portman also hailed the "middle out" approach taken by negotiators and suggested that the enactment of the bill should be the beginning of a renewed effort at bipartisanship.

Senator Portman also noted policy differences he has with the separate BBBA, which is being advanced under Congressional budget reconciliation rules, meaning that the end-product likely will have the support of only Democrats. The BBBA, as currently drafted, also contains significant provisions on cryptocurrency and still faces potential headwinds in the House if CBO scoring is inconsistent with previously released White House estimates, and then later in the Senate where Sen. Joe Manchin (D-WVa) and Sen. Sinema, the only senator to be a lead negotiator on both the Infrastructure Investment and Jobs Act and the BBBA, have made separate demands about the scope and price tag of the BBBA.

Assuming the BBBA passes the House, it will contain a provision that would amend Internal Revenue Code Section 1091 on wash sales to include references to digital assets. BBBA Section 138152 would define “specified asset” to mean, except as otherwise provided by the Treasury Secretary, “any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.”

The BBBA also would amend the Internal Revenue Code to include digital assets in provisions dealing with constructive sales and the BBBA would include digital assets among the Internal Revenue Service’s statutory enforcement priorities (See BBBA Sections 138150, 138152, and 138401). If the BBBA passes the House, it would still have to go to the Senate where it could be further amended and sent back to the House.

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