

U.S. Senators Thom Tillis (R-NC) and Bill Hagerty (R-TN) – ENFORCE Act
The Ensuring Necessary Financial Oversight and Reporting of Cryptocurrency Ecosystems Act

PRONG 1: ENSURE BSA/AML COMPLIANCE

Federal law requires a wide variety of financial institutions to comply with the Bank Secrecy Act (BSA) and its related anti-money laundering (AML) and know-your-customer (KYC) standards. Though the majority of reputable actors in the digital asset and cryptocurrency ecosystem abide by these requirements under already-existing financial institution definitions, some do not and argue the current definitions are not applicable to them. The ENFORCE Act would make it crystal-clear that any *centralized and customer-facing* digital asset institutions falls under a definition found within BSA/AML and must abide by long-established AML and KYC requirements.

Section 2: Creates the New Category of Digital Asset Financial Institution

- Creates a new category of financial institution known as a ‘digital asset financial institution’ under the portion of U.S. law that list BSA/AML-required entities
- Limits ‘digital assets financial institutions’ to entities that do not identify as an already-existing financial institution definition *but* effectively function as either a digital asset exchange, custodian, issuer, or monetary intermediary that converts monetary instruments into digital assets or visa-versa

Section 3: Applies Applicable AML Requirements to Digital Asset Financial Institutions

- Prescribes the same AML and KYC requirements applied to money service businesses (MSBs) to the new definition of digital asset financial institution

Section 4: Applies Applicable Suspicious Activities Reports (SARs) Requirements to Digital Asset Financial Institutions

- Prescribes the same reporting requirements currently applied to money service businesses (MSBs) to the new definition of digital asset financial institution
- Adds optionality to allow the digital asset financial institution to utilize a third-party to assist with the filing, record-keeping, and management of SARs reporting
- Requires the Department of the Treasury to conduct a review after 5 years and publish a set of ‘best practices’ on SARs reporting for digital asset financial institutions

PRONG 2: ADDITIONAL TREASURY SPECIAL MEASURES AUTHORITY

The Department of the Treasury has well-established authority (known as Section 311 authority) to implement ‘special measures’ on financial institutions in response to instances of primary money laundering. Specifically, Treasury can require U.S. domestic financial institutions to perform additional due diligence, collect additional information, or condition or outright ban the opening or maintaining of correspondent or payable-through accounts (which are necessary to facilitate payments with a foreign financial institution) for a foreign financial institution that is determined to be a nexus of a primary money laundering concern. Effectively, this allows U.S. regulators to increase actionable intelligence, cut bad actors off from the U.S. financial system, and export U.S. illicit finance policy abroad (as foreign financial institutions who transact with money laundering entities risk being cut off from the U.S. financial system themselves).

However, Treasury’s statutory authority to utilize these tools against instances of digital asset illicit finance is unclear. The ENFORCE Act would provide legal certainty that Treasury can bring these powerful tools to bear in instances of digital asset illicit finance.

Section 5: New Special Measures Authority

- Adds a new provision to existing Section 311 authority that gives Treasury the ability to impose one or more of the ‘special measures’ in instances where digital assets are utilized to facilitate a primary money laundering concern
- Maintains existing Section 311 requirements for Treasury to undergo notice-and-comment rulemaking when implementing new authority

PRONG 3: EXTEND ANTI-TIP OFF PROVISIONS TO AID LAW ENFORCEMENT

Traditional financial institutions are required to abide by federal anti-tip off provisions to ensure that customers under investigation for illicit activity or whose record are sought for grand jury or other types of subpoenas are not informed prematurely. The ENFORCE Act would apply this same standard to digital asset financial institutions to ensure that law enforcement can properly investigate and the justice system can properly adjudicate those involved in illicit financial activity.

Section 6: Ensures Anti-Tip Off Compliance for Digital Asset Financial Institutions

- Prescribes edits to Section 1510(b)(3) of title 18, United States Code to ensure that digital asset financial institutions and other entities in the digital asset ecosystem operate under the same anti-tip off laws that cover traditional financial institutions

PRONG 4: BOSLTER ILLICIT FINANCE INFORMATION SHARING EFFORTS

Law enforcement agencies already have many tools to effectively combat illicit finance. Often, what is needed most are better avenues for communication between law enforcement and financial institutions coordinate and deploy resources most effectively. The ENFORCE Act would establish a pilot program for federal agencies and the private sector to share information related to illicit financial activities and establish best practices.

Section 7: Information Sharing Pilot Program to Combat Illicit use of Digital Assets

- Requires the Attorney General (AG) to establish a pilot program under which relevant law enforcement agencies and voluntarily-participating private sector entities may share information about potential illicit finance violations and bad actors

PRONG 5: ESTABLISH DIGITAL ASSET AML EXAMINATION STANDARDS

Traditional financial institutions have clear anti-money laundering (AML) standards that bank examiners will score them against. This does not currently exist for the digital assets industry. The ENFORCE Act would require that state and federal authorities work together to craft examination standards so digital asset institutions have clear rules of the road to follow.

Section 8: Crypto Asset Anti-Money Laundering Examination Standards

- Requires Treasury, CFTC, and SEC to adopt financial institution examination standards related to the prevention of money laundering and sanctions evasion in digital assets akin to the same standards currently required of traditional financial institutions

PRONG 6: MISCELLANEOUS

The ENFORCE Act seeks to provide clarity for digital asset participants about the Bank Secrecy Act (BSA) requirements applicable to them, including relevant anti-money laundering (AML), know-your-customer (KYC), and suspicious activity reports (SARs) requirements. The ENFORCE Act does not change or diminish current BSA/AML, KYC, or SARs requirements for any already-existing financial institutions.

Section 9: Rule of Construction

- Explicitly states nothing in this legislation limits or restricts the application or requirements under subchapter II of chapter 53 of title 31, United States Code or part 1022 of title 31, Code of Federal Regulations