The United States of America is a FinTech heavyweight with a comprehensive regulatory framework on crypto.
Coinfirm's Guide to USA Cryptocurrency Regulations

The United States of America is a FinTech heavyweight. Whilst New York is viewed as a prominent global financial hub – the home of Wall Street, Silicon Valley in California is seen as one of the topmost innovative places in the globe. Therefore it is unsurprising that blockchain as an emerging technology and cryptocurrencies as an asset class has taken hold. This has led to the country having a high penetration of investors in cryptocurrency and hosts a number of prominent VASPs (Virtual Asset Service Providers), including major exchange Coinbase, top crypto security company BitGo and hardware wallet provider LedgerX.

In addition to being a world leader in crypto and blockchain adoption, the USA has arguably the world’s most advanced – and largest by market capitalization – of financial markets. Like any global hub, the USA has to combat an increased prevalence of financial crime. As a member of the FATF (Financial Action Task Force) - the global Anti-Money Laundering and Combatting the Financing of Terrorism watchdog - the USA’s regulatory framework of AML and CFT is stringent. The FATF’s Recommendation 16, the so-called ‘Travel Rule’ is widely regarded as following on from the USA’s prominent AML law, the Bank Secrecy Act (BSA).

Cryptocurrency can be legally bought and sold in the USA from another person, crypto exchange, Bitcoin ATMs and recently, some banks. Financial institutions can also run independent node verification networks (INVNs), allowing them to partake in the building blocks of the blockchain ecosystem. A number of federal laws and regulations regarding Bitcoin and other cryptocurrencies govern how and what foreign and domestic obliged entities must adhere to when transacting in and through the jurisdiction of the United States of America.
In this report on cryptocurrency regulations in the USA, Coinfirm takes a look at;

1. The Bank Secrecy Act (BSA)
2. BSA and the Patriot Act
3. Self-Hosted Wallet Regulation
4. Taxes
5. Licencing Requirements
6. Financial Intelligence Units & Agencies
7. OFAC Sanctions

Key Takeaways

- Buying, selling and owning crypto is legal
- Various cryptocurrency activities are regulated by different US agencies
- Cryptocurrency is defined differently by the various USA regulatory agencies/FIUs
- The Bank Secrecy Act is the primary USA AML/CFT regulation
- National banks can custody crypto assets and run blockchain nodes
- Exchanges are classed as Money Services Businesses (MSB)
The Bank Secrecy Act or ‘BSA’, is the US’ primary AML law and a regulation USA-based cryptocurrency businesses must comply with.

The BSA, commonly also known as the Currency and Foreign Transactions Reporting Act, requires obliged entities such as cryptocurrency exchanges to submit a number of different types of reports; Currency Transaction Reports, Suspicious Activity Reports, Foreign Bank Account Report (FBAR), Currency and Monetary Instrument Report (CMIR) and Designation of Exempt Person.

The Bank Secrecy Act requirements impose money laundering controls on financial institutions and many other businesses, including the requirement to report and keep records of various financial transactions, specifically those over the sum of $10,000 in cash and of a suspicious nature, in an IRS/FinCEN Form 8300 filing.

The body responsible for overseeing the Bank Secrecy Act is FinCEN or the ‘Financial Crimes Enforcement Network’, the United States of America’s Financial Investigative Unit (FIU) that combats domestic and international terrorism financing, money laundering and other financial crimes.

There are hefty fines and penalties for those failing to report under the Bank Secrecy Act.

The BSA and the Patriot Act

In the wake of the 9/11 terrorist attack on US soil, the BSA was amended to incorporate pieces of the Patriot Act in the effort to find and fight terrorist financing networks domestically and abroad – and building out the importance of the risk management process CFT (Combatting the Financing of Terrorism).

CFT has since gone on to become an integral element of the compliance strategy with USA cryptocurrency regulations of any financial institution (FI) or obliged entity alongside KYC, AML etc, as other countries imposed similar financial regulations regarding terrorist financing.
FinCEN’s Self-Hosted Wallet Regulation

Late in 2020, the past Trump administration published a consultation period on a contentious proposed new KYC (Know-Your-Customer) ruling on VASPs (Virtual Asset Service Providers) conducting business with private, self-hosted wallets.

The ruling has raised issues from one side on the encroachment of privacy rights whilst the other believes that the crypto ecosystem should have more stringent regulation in light of more self-hosted wallets interacting with one another in an economic model with the rise of DeFi (decentralized finance).

The public consultation period for the proposed ruling has been extended by the new Biden administration.

Taxes Applicable to Crypto

Bitcoin and other cryptocurrencies that are held as an investment are taxed under capital gains or loss (for holding periods of less than 1 year, short term capital gains are applied, for longer than 1 year, long term capital gains is applied). For tax purposes, cryptocurrency held in this way is classed as property.

US taxpayers must retain detailed records of their transactions in crypto and report these to the IRS.

Mining of cryptocurrency, and payment for services/goods are both taxed by the IRS as income (in both cases, the dollar figure recorded must be of the value the cryptocurrency was on the day that they were received).
In July 2020, the Office of the Comptroller of the Currency (OCC) made clear that American national banks can custody crypto assets, provide crypto-fiat exchange, settlement and tax auditing services, amongst other crypto activities. In January 2021, the OCC noted that banks are also able to run blockchain nodes and thus actively contribute in shaping crypto market structures. These moves come at a time when Bitcoin and the wider cryptocurrency markets experience growing adoption from traditional finance players.

Most crypto businesses – including cryptocurrency exchanges – are classed by FinCEN as Money Service Businesses (MSB) due to facilitating the trade of Convertible Virtual Currencies (CVCs). CVCs are a USA regulatory term for cryptocurrencies.

Cryptocurrency exchanges that fail to register as a MSB are in breach of the AML/CFT regulation the Bank Secrecy Act.

Crypto fund managers that invest in crypto futures must be licenced with the CFTC (Commodity Futures Trading Commission) as a Commodity Trading Advisor and Commodity Pool Operator. This also applies to fund managers using leverage/margin trading.

ICOs that could be construed as securities must be registered with the SEC (Securities and Exchange Commission) – see the Howey Test, or request an exemption.
Various regulatory authorities see themselves as the regulator for cryptocurrencies in the United States. The fact that cryptocurrencies have been and continue to be classed variously as commodities, securities and currencies can further confuse market participants. However, a recent USA crypto regulation proposed last year, the Crypto-Currency Act of 2020, sought to define which regulators regulate what – helps to visualize the regulatory nuances as they are in-line with historic litigation, criminal proceedings and applicable laws.

Federal Crypto Regulators

**Security and Exchange Commission - SEC**

**Commodity Futures Trading Commission - CFTC**

**Financial Crimes Enforcement Network - FinCEN**

**Crypto-asset Classification**

- **Crypto-commodities**
  - E.g. BTC, ETH, etc

- **Crypto-securities**
  - E.g. Bitcoin, ETFs

- **Crypto-currencies**
  - E.g. Stablecoins

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**USA Cryptocurrency Regulations**

**Regulatory & Financial Intelligence Units/Agencies**
Federal Crypto Regulators

- **Securities and Exchange Commission – SEC**
  - The SEC regulates the financial industry in the USA. In the past, it has sought to regulate crypto as a security. In recent years it has applied the term to a number of different crypto businesses that are deemed to be issuing unregulated securities as their ICOs (see the Howey Test).

- **Commodity Futures Trading Commission – CFTC**
  - The CFTC regulates financial markets in relation to futures, swap, and some options. Most commodities in today’s financial markets are traded on the futures market. In the past, the CFTC has taken the view that cryptocurrencies “are commodities” as the then-Chairman in 2019 noted about Bitcoin and Ether.

- **Office of the Comptroller of the Currency – OCC**
  - The OCC is the USA financial regulator charged with overseeing national banks such as appointing charters and penalties etc. In 2020 and 2021, the OCC has been issuing charters to cryptocurrency ‘banks’, as the industry welcomes FIs and large fund management companies.

- **Financial Crimes Enforcement Network – FinCEN**
  - FinCEN is an office of the US Treasury that analyzes information about financial transactions in an effort to counter money laundering and terrorism financing. FinCEN oversees the USA financial regulation the Bank Secrecy Act and in late 2020 proposed KYC (Know-Your-Customer) checks on VASPs transacting cryptocurrency with self-hosted wallets.

- **Office of Foreign Assets Control – OFAC**
  - The OFAC is a financial intelligence unit (FIU) and a US agency responsible for overseeing the compliance of trade sanctions, blacklisting. USA cryptocurrency regulations revolving around sanctions for obliged entities must be adhered to.

- **Federal Bureau of Investigations – FBI**
  - The FBI is responsible for crime enforcement at a federal level. Cases that the FBI has been involved in within the crypto industry include; (1) the investigation and takedown of the infamous darknet marketplace (DNM) ‘Silk Road’, including asset forfeiture in 2013 and the 2020 Twitter Bitcoin hack which affected hundreds of corporate business and prominent persons’ accounts.

- **Internal Revenue Service – IRS**
  - The IRS’ purview includes the tax collection of the United States government.
OFAC Cryptocurrency Sanctions

Because the United States Dollar (USD) is currently the reserve currency of the world, its use is ubiquitous across traditional financial markets and the majority of economies.

Therefore, most obliged entities – cryptocurrency exchanges, custodians etc – need to closely monitor the OFAC (Office of Foreign Assets Control) sanctions list to legally cater to United States citizens or business interests to comply with USA cryptocurrency regulations. The OFAC sanctions list, as well as listing entities and individuals, also include cryptocurrency addresses related to said entities/individuals.

OFAC sanctions apply to transactions with high-risk designed countries’ governments (e.g. Syria, North Korea) and entities or individuals that are representing (transacting on behalf of) a sanctioned country.

Failure to comply with refusing business/freezing assets on blacklisted addresses on the OFAC list will result in monetary fines.
Founded in 2016, Coinfirm is the world leader in blockchain analytics and regulatory technology (‘RegTech’) solutions. The company specializes in blockchain AML (‘Anti-Money laundering’) services and fraud investigations and offers the industry’s largest blockchain coverage, supporting $845k+$ crypto assets including Bitcoin and the ERC-20 standard.

Coinfirm’s solutions are used by market leaders globally, ranging from crypto exchanges such as Binance, and protocols like XRP, to major financial institutions and governments. The AML Platform enables clients and partners to detect crypto crime such as money laundering, terrorism financing, fraud, sanctions evasion and more. Coinfirm is the first firm to offer an AML compliance solution to DeFi in the form of the AMLT Oracle.

Headquartered in London, UK, Coinfirm retains Warsaw and Torun offices in Poland, and Tokyo, Japan. Over 250 entities have trusted the company to provide RegTech solutions to stay in compliance with the Financial Action Task Force guidance.

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